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GUIDE TO MARINE INSURANCE

BEING A HANDBOOK OF THE LAW AND PRACTICE OF MARINE INSURANCE WITH SPECIAL REFERENCE TO POLICIES ON GOODS

BY

HENRY KEATE

LATE LECTURER ON MARINE INSURANCE, MANCHESTER HIGH SCHOOL OF COMMERCE, AND UNDERWRITER AND SECRETARY TO THE THAMES AND MERSEY MARINE INSURANCE COMPANY LIMITED, MANCHESTER

ELEVENTH EDITION

BY

L. GURNEY

LOCAL MANAGER, THAMES AND MERSEY MARINE INSURANCE COMPANY LIMITED, MANCHESTER

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PREFACE TO ELEVENTH EDITION

SINCE the publication of the tenth edition of this work, the world has again been to war and, in the absence of a really descriptive official title for the conflict, it has been necessary to refer to it by date alone. Innovations in the practice of marine insurance have necessitated certain additions and amendments. In particular, mention may be made of the Wartime Extension Clauses, which in 1943 came into obligatory use in all policies covering cargo against marine perils.

During 1943 underwriters decided to modify the agreement which was made in 1937, under which it was decided to restrict war risk to the period whilst the goods were on board the ocean-going vessel. The modification consisted of a decision to grant cover, if required, for an unlimited period whilst the goods were lying at a port of transhipment, whether on board the ocean-going vessel or elsewhere. The Wartime Extension Clauses and the decision to cover war risks at ports of transhipment are indications of the manner in which underwriters have endeavoured to accommodate merchants and shippers in a difficult period.

Appendix G of this edition contains a table prepared by the writer, which may prove of assistance to those who require to effect insurance on the basis of C.I.F. cost with 10 per cent added. The table provides for rates of insurance up to £15 per cent, and this figure and even higher rates were reasonably paid for cargo war risk insurance on certain voyages in the years 1942–3. It may serve as a reminder of the vigour with which the enemy conducted warfare by submarine, and help to promote the feeling that such conditions, with tragic loss of men and ships, must never be allowed to prevail again.

I am indebted to Mr. William Hanbidge for his assistance in rearranging certain chapters and for reading the proofs of this edition.

L. GURNEY.

PREFACE

THE purpose of this book is to give a clear and simple explanation of the principles which govern the relationship between assured and underwriters under a contract of Marine Insurance with special reference to the points which are peculiar to the insurance of cargo.

I acknowledge the courtesy of the Committee of the Association of Average Adjusters in allowing me to insert the Rules of Practice, a knowledge of which is necessary for all who prepare or examine Average Adjustments. I wish also to acknowledge my indebtedness to the many authorities whose works it has been my privilege to consult and I acknowledge also my indebtedness to those who by suggestions and suggestive questions have rendered much help in the preparation of each edition.

H. K.

CONTENTS

GUIDE TO MARINE INSURANCE

CHAPTER I

HISTORICAL

The Lombards.

FOR our English system of Marine Insurance we are indebted almost entirely to the Lombards, who, driven from their native cities in Northern and Central Italy about the middle of the thirteenth century, settled in every maritime country in Europe.

The majority of the Lombards who settled in this country became " usurers," and as in their native cities of Lombardy the practice of usury and the business of Marine Insurance were frequently combined, it was inevitable that the Lombards should, at an early date in their residence here, commence the business of Marine Insurance.

It is quite certain that before the end of the fifteenth century they had elaborated a system of premiums for various risks, which was no doubt based on the customs of their fellow-countrymen in other lands.

They would be well acquainted with the laws issued by the magistrates of Barcelona, in which it is interesting to notice the following provisions—

> " To prevent disputes between the parties there should be no priority of time or privilege on the part of underwriters of the same insurance even if subscribed on different days, the like obligation binding on the first name holds all the others."

"That the people who are authorized to write out policies of insurance shall be bound to see that they are properly drawn, clearly and distinctly, without confusing terms."

"They must likewise declare on oath that the insurances are real and not fictitious."

Finally, it was ordered that insurers should be obliged to pay for damage or total loss not later than four months after the same had been truly asserted, and where no news was received of a vessel, the insurers were compelled to pay for the loss at the end of six months after the date of the receipt of the last report.

The chief aim of the laws seems to have been to prevent the over insurance of ships, and the strictest rules are laid down for both insurer and assured neither to grant nor to demand insurance to the full value but always below it, thus offering an incentive to owners to do their utmost to secure the careful handling of their vessels.

In a set of laws published in Venice in 1468 the quaint remark appears that "persons who undertake to insure large and small vessels not unfrequently get into the pernicious and detestable habit of disputing insurance claims upon frivolous causes."

A still later decree insists upon the storage of all goods below deck and cites a number of casualties which have occurred owing to the existence of "the deplorable practice of storage on deck"—severe fines were to be inflicted upon the commanders of all vessels breaking the law—three-fourths going to the treasury and one-fourth to the informant, whose name in all cases was kept strictly secret.

All these regulations would be familiar to the Lombards, and there is no doubt that they formed the basis upon which the Lombards effected insurance on English merchandise from their residences in Lombard Street.

The power of the Lombards was broken by a decree issued in 1597, but their connection with the development of Marine Insurance is perpetuated in one of the last

sections in the ordinary form of Lloyd's Policy, which reads—

> "And it is agreed by us the insurers that this writing, or policy of assurance, shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street or in the Royal Exchange, or elsewhere in London."

French Regulations.

The most important laws come from an unknown French source in a set of regulations published probably at Rouen in the seventeenth century, and point to a close connection between foreign marine customs and the growth of insurance in England, for we find the form of policy to be that adopted in England, a form which closely corresponds to the present Lloyd's Policy. In addition, the regulations contain a statement of the rate of exchange between France and England.

English Act of 1601.

In our own Statute books we find no mention of Marine Insurance until 1601, when an act was passed "concerninge matters of assurance amongste Merchantes."

Its chief interest lies in the internal evidence it gives of the progress that Marine Insurance had then made.

> "And whereas it has been time out of minde an usage amongst merchantes, bothe of these realms and of foreign nations when they make any great adventure (specially into remote parts) to give some consideration of money to other persons (which commonly are in no small number) to have from them assurance made of the goods, merchandises, ships and things adventured or some part thereof, at such rates and in such sort as the parties assurers and the parties assured can agree, which course of dealing is commonly termed a policy of assurance; by means of which policy of assurance it cometh to pass that upon the loss or perishing of any ship there followeth not the

undoing of any man, but the loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than those that do adventure, whereby all merchantes, especially the younger sort are allured to venture more willingly and more freely."

It would be difficult to find a more concise statement of the objects of Marine Insurance, a statement which requires no amplification to meet even the changed commercial customs of our own days.

The special object of the Act was to establish a court for trying actions of Marine Insurance, and so obviate delay, which appears to have been prevalent. The Act failed completely in its object, but was not specifically repealed until early in the nineteenth century.

Lord Mansfield.

There was no marked development in our own laws until 1756, when Lord Mansfield became Lord Chief Justice and devoted himself earnestly to the study of the principles of Marine Insurance and their application in other countries.

Lord Mansfield is commonly said to have made the Marine Insurance law of England, and the truth of this statement is apparent in the reports which we have of the cases which came before him and his decisions which became, in default of an actual code of laws, the recognized law of Marine Insurance.

One result of his work was the issue, in 1786, of a book published by Mr. Park, and revised by Lord Mansfield, which for almost a century was recognized as the standard book on the subject.

Marine Insurance Act, 1906.

From Lord Mansfield's day down to 1906, the law of Marine Insurance was administered by an appeal to precedent, but in the Act passed on December 21st, 1906, we have a code which, admittedly based on the practice of our courts,

contains in language clear even to the layman the whole law of Marine Insurance.

The points which are still constantly coming before the courts for settlement will be found in the majority of cases to turn on the interpretation which is to be attached to some special stipulation or clause which is contained in the contract and not on the principles which underlie the law of Marine Insurance.

Lloyd's.

Prior to 1666 the business had been largely conducted by individuals in their own offices, but with the advent of the coffee houses which sprang up in London after the Great Fire in that year, a new and far-reaching development had its origin, for side by side with the use of the coffee houses as meeting places for the literary giants of those days, there was their usefulness as common meeting places for commercial men.

In 1688 we find the first record of a name which will always be associated with Marine Insurance, in advertisements referring to runaway slaves and offering rewards if information was given to *Lloyd's* Coffee House in Tower Street.

In 1691 or 1692 Mr. Lloyd removed to the corner of Lombard Street, and his house rapidly became the recognized meeting place for the leading merchants and shipowners. Mr. Lloyd's energy and ability showed itself in 1696 by the publication of a paper dealing largely with commercial and shipping interests and intended primarily for his own customers—only seventy-six numbers were published, but the fact of their publication attracted the attention of the whole shipping community to Lloyd, and his house increased in importance as a centre for the transaction of Marine Insurance business.

Lloyd's next step was to publish a paper with the title Lloyd's List, which reported the movements of vessels in various parts of Europe and also the various rates of exchange.

Marine Insurance Corporations.

The operations of the private underwriters of Lloyd's were attended with so much success that it is not surprising to find that movements were set on foot to institute companies to undertake the business of Marine Insurance.

These attempts were unsuccessful until 1720, when charters of incorporation were granted to the London Assurance Corporation and the Royal Exchange Assurance Corporation, and a monopoly was created in their favour.

The creation of the monopoly caused very natural resentment amongst the private underwriters, who were, by its means, suddenly deprived of all means of carrying on the business which they had built up, and after a great struggle they succeeded in having the charters reduced to a monopoly only so far as companies or societies were concerned and not in respect of individual underwriters.

The passing of an Act of Parliament in 1746, which prohibited reinsurance and rendered wager policies legally invalid, did much to reduce the scope of the operations of the two companies, and the bulk of Marine Insurance business remained in the hands of the members of Lloyd's, who in 1774 settled in quarters of their own at the Royal Exchange, and laid the foundation of the system of membership which still prevails at Leadenhall Street.

Lloyd's Policy.

In 1779 the members of Lloyd's took the important step of definitely fixing the printed form of policy, and, receiving the sanction of Parliament, the Lloyd's Policy upon which the whole of the policies up to the present date are based became the recognized form for all underwriters.

Many attempts were made to abolish the monopoly enjoyed by the Royal Exchange Assurance Corporation and the London Assurance Corporation, but all were unsuccessful until 1824, when, through the efforts of the founder of the English branch of the Rothschild family, Nathan Rothschild, the monopoly was abolished.

He founded the Alliance British and Foreign Fire and Life Assurance Company, and announced that the company would transact the business of Marine Insurance. A member of Lloyd's who had taken fifteen shares proceeded against the directors for breach of contract between them and the subscribers, as no mention of Marine Insurance had been made in the original prospectus, and won his case.

Rothschild's reply to this decision was immediately to set up the Alliance Marine Insurance Company, which was nominally independent of the Fire and Life Company until 1905.

The abolition of the monopoly in 1824 and an Act passed in 1864, which again legalized reinsurance, gave impetus to the formation of Marine Insurance Companies. Some have died after the briefest of lives, and others have steadily built up an almost impregnable financial position.

During the war of 1914–1918 many companies were formed for the purpose of transacting marine business, but, with few exceptions, they have found it impossible to continue their operations.

Since the start of the twentieth century many large insurance companies which had formerly transacted all classes of business other than marine, have opened a marine account, and in many instances the method adopted has been to acquire a marine company, the underwriter of such company being entrusted with the development of the marine account from the connection of the parent company, whilst continuing to transact business as a subsidiary company.

CHAPTER II

CONCEALMENT AND MISREPRESENTATION

"THE contract of Marine Insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party." (Section 17 of the Marine Insurance Act.)

Concealment of Information.

THE nature of the transaction, its dependence upon the knowledge of each of the parties to it, and in the days before the almost universal use of the cable and telegraph, the ease with which one party to the contract could have taken advantage of the ignorance of the other, made it essential that the most stringent rules should be applied.

In the course of business it is the knowledge of the assured which is of most value, for, by his connexion with the property which he wishes to insure, he has access to sources of information which are not open to the underwriters.

Therefore there must be on the part of the assured no deliberate withholding of information.

But it is quite possible that the assured may think his knowledge of little or no value to the underwriter; if this is so, and in the course of events the facts which were known to the assured prove to be material, that is, are proved to have had value in their relation to the contract, the underwriters will be released from all liability; so that in the eyes of the law there is no difference between a deliberate and malicious concealment and a concealment which arises through an error of judgment on the part of the assured.

Facts in connexion with the property insured which seem trivial in the eyes of the assured may have great importance in the eyes of the underwriter, and he is entitled to a full and

complete answer to any questions which he considers it necessary to ask.

But as Lord Mansfield said—

> "The assured need not mention what the underwriter knows, what way soever he came by that knowledge; or what he ought to know, or takes upon himself the knowledge of; or waives being informed of; or what lessens the risk agreed and understood to be run; or general topics of speculation; or every cause which may occasion *natural perils*, as the difficulty of the voyage, kind of seasons, probability of hurricanes, earthquakes, etc., or every cause which may occasion political perils, from the rupture of states, from war, and the various operations of it, upon the probability of safety from the continuance and return of peace or from the imbecility of the enemy."

If the insurance is effected through an insurance broker, then it becomes the duty of the principal to pass on to the broker every material circumstance connected with the risk and he in turn must pass on to the underwriter all the knowledge which he has with regard to the goods to be insured, whether the information has come to him in the course of his business as an insurance broker or by advices from his principal.

The main reason for transacting business through a broker is that some advantage is expected to be reaped from the special knowledge which he possesses, and therefore the fact that the knowledge of the shipper plus the knowledge of the broker must be placed at the service of the underwriter needs to be emphasized.

If the assured or the broker fails to make disclosure of any circumstance which would have influenced the judgment of the underwriter in fixing the rate or determining whether he would take the risk, the underwriter may repudiate the contract.

In insurances on goods the information which is at the disposal of the merchant will in many cases be contained in

letters which have been forwarded to him, and if he neglects to give his underwriters the information which has come to him in this manner, he runs grave risk of concealing, quite innocently, some fact which in the after course of events may prove to be material.

The remarks of Mr. Justice Hamilton in a case in which the question of concealment had been raised (*Neugebauer & Co.* v. *London & Provincial Marine Insurance Co.*, October, 1910) are worthy of careful notice—

> "I am bound to come to the conclusion that the question put by the underwriters was erroneously though honestly answered in a way which gave information that was not a correct answer to the question, and in a way that would be understood by anybody receiving it to amount to this—that there was no circumstance affecting the risk that you may concern yourselves about."

The result was, such was the rigour of insurance law, that the underwriters succeeded in the action.

Misrepresentation.

The assured is not entitled wilfully to mislead an underwriter for the purpose of obtaining more advantageous terms, and therefore every material representation which is made during the negotiations preceding the acceptance of the risk, must be true. He cannot, for example, lead the underwriter to assume that the goods are to be insured for a summer voyage when it is not the intention to ship them until the winter, nor to infer that goods are about to be shipped when they were actually on the seas at the time the representation was made.

Any statement which has misrepresented the facts will render the policy voidable, should the effect of that statement have been a factor which the underwriter has taken into account in accepting the risk or fixing the premium.

CHAPTER III

INSURABLE INTEREST AND COURSE OF BUSINESS

IT is essential that a person who wishes to take out a policy of Marine Insurance should be legally entitled to do so, and a clear definition is given in Section 5 of the Act of the conditions which constitute a legal insurable interest.

Insurable Interest.

"Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

"In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure, or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof."

The owner of goods naturally has an insurable interest in his goods, as also has an agent who can prove that he would suffer loss by damage or destruction of property at risk on the sea.

Payment of freight on goods is now almost invariably paid in advance, and therefore the right of insurance rests with the shipper.

By the term "freight" is meant the sum of money paid to the shipowner for carrying goods from the port of loading to the port of discharge, and where freight is paid in advance by the shipper, or he undertakes to pay "vessel lost or not lost," there is no claim against the shipowner in the event of the vessel being totally lost by a peril of the sea.

If the contract does not contain these conditions the shipowner is unable under English law to receive payment until he has delivered the cargo at its destination; and, therefore,

under these conditions, he has an insurable interest. (*See* Chapter XXII.)

The shipper also has an insurable interest in the charges of insurance, that is the premium and the stamp duty, both of which receive consideration later.

The assured must be interested at the time of the loss and if he has parted with his interest or has not yet acquired interest in the property insured, he has no legal insurable interest.

Course of Business.

In the ordinary course of business it is the custom for underwriters to issue a slip or covering note on the acceptance of a risk for a voyage or to cover shipments made during a period of time, but it is well to emphasize the fact that although repeated attempts have been made to get the slip or covering note accepted as proof that underwriters had agreed to issue a policy, and even in some cases to get the slip itself recognized as the embodiment of the contract, the legal position has always been that the courts have refused to recognize any other document than the policy, stamped in accordance with the demands of the Inland Revenue Authorities.

But once a policy is issued, then the slip or covering note has value, for if a policy is dated August 30th, the covering note for which was issued on August 1st, the underwriters are liable for all losses coming within the perils covered by the policy, even though the circumstances connected with the risk have materially changed between August 1st and August 30th.

If, however, underwriters receive news of a casualty to the vessel on which goods have been shipped after they have issued a covering note, there is no legal obligation upon them to issue the policy, but it is the custom of underwriters to consider the slip or covering note as a definite promise to issue a policy and the circumstances must be very suspicious before they decide to avail themselves of their legal rights.

Kinds of Policies.

The policy issued on goods will take the form of either a *Valued Policy* or a *Floating or Open Policy*.

A Valued Policy is one in which the value agreed between underwriters and assured is inserted, as tea valued @ £500 or cotton valued @ £10,000. This value need not be the actual value, but the importance of its insertion in the policy is dealt with in the chapter on " Insurable Value."

A Floating or Open Policy is one issued for a large amount, and as shipments are made a declaration of their value is made to the underwriter, who deducts the amount declared from the sum insured under the policy.

If a policy is issued for £50,000 on January 1st and goods value £6,000 are shipped on January 10th, the underwriters on receipt of the declaration will reduce the sum available under the policy to £44,000. As further declarations are made, the balance is reduced until the full sum of £50,000 has been absorbed.

The Marine Insurance Act (Section 29 (3)) states that—

> " Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith."

It is not open to the assured to omit to send in declarations for goods which he knows have safely arrived; if this is done it is a distinct breach of both the spirit and letter of the contract and will render the policy void.

The policy issued by a Marine Insurance Company is a contract between the assured and the company, but a policy issued by underwriters at Lloyd's is a contract between *each* of the underwriters who have signed the policy (or on whose behalf the policy has been signed) and the assured.

Permanent or Annual Covers.

Business is sometimes transacted under a Permanent or Annual Cover, which purports to be an agreement (although it is not usually issued under stamp) between the underwriter and the insured, under which the insured agrees to place all his business with the underwriter who, on his part, agrees to accept it. Such a cover possesses almost the same advantages as a Floating or Open Policy, but the premium is paid and a policy issued as each shipment is made. The rates and conditions are agreed at the time the cover is issued. All such covers and floating or open policies contain provision for cancellation upon notice being given by either side. The length of notice usually agreed upon is one month in respect of marine perils, and seven days in the case of war perils.

Stamp Act, 1891.

The Stamp Act of 1891 provides that "*A contract of marine insurance shall not be valid unless the same is expressed in a policy of sea insurance.*" The schedule is as follows—

SEA INSURANCE POLICIES—STAMP DUTIES FROM 1ST SEPTEMBER, 1920

VOYAGE POLICIES

	s.	d.
Where the sum insured does not exceed £250	–	3
Where the sum insured exceeds £250 but does not exceed £500	–	6
Where the sum insured exceeds £500 but does not exceed £750	–	9
Where the sum insured exceeds £750 but does not exceed £1,000	1	–
Where the sum insured exceeds £1,000 for every £500 or fractional part of £500	–	6

TIME POLICIES

	A		B	
	s.	d.	s.	d.
Where the sum insured does not exceed £250	–	9	1	6
Where the sum insured exceeds £250 but does not exceed £500	1	6	3	–
Where the sum insured exceeds £500 but does not exceed £750	2	3	4	6
Where the sum insured exceeds £750 but does not exceed £1,000	3	–	6	–
Where the sum insured exceeds £1,000, for every £500 or fractional part of £500	1	6	3	–

A.—For periods not exceeding six months.

B.—For periods in excess of six months, but not exceeding twelve months.

On all Sea Policies where the premium does not exceed 2s. 6d. per cent. of the sum insured : Stamp Duty, 1d.

Non-Marine Policies

On all policies of insurance against fire, burglary, accident, sickness, indemnity, employers' liability, etc. : Stamp Duty, 6d.

This extra duty of 6d. must be charged in all cases where the land risk is in excess of the thirty days allowed for voyage policies by Section 94 of the Stamp Act.

CHAPTER IV

THE PREMIUM

THERE is no stipulation in the Act of 1906 that the premium must be inserted in the policy.

The premium is generally a charge of so much per cent on the value of the interest insured, and this charge varies according to the nature of the voyage, the liability to damage of the interest insured, and the risks insured against.

Insurance Companies usually allow rebates of 5 per cent as brokerage and 10 per cent as discount, a total deduction of 14½ per cent from the premium. If the insured should deal directly with the Insurance Company it is customary to allow to him both deductions unless there is an express arrangement to the contrary, as, for example, a quotation made on a net basis.

Rate of Premium.

In fixing a rate of insurance an underwriter will be guided by the records which he has of the results of similar business over a period of years and will take a favourable or unfavourable view of the risk according to the nature of his experience.

If business is transacted direct with an Insurance Company or an underwriter, the payment of premiums will naturally be direct and the liability for payment will rest upon the assured. But in the event of the business being placed through a broker a different set of conditions is set up; the underwriter must look to the broker for payment of the premium, and so far as his relations with the assured are concerned, the premium is assumed to be paid.

In the policy the assurers confess themselves paid the consideration due unto them for the assurance, and therefore they are debarred from repudiating liability under the policy, by reason of the non-payment of the premium.

If a claim arises on the policy, and the broker informs the underwriters that although he had paid the premium, his principals had not reimbursed him, the underwriters would still be liable to the assured for payment of the claim, and the broker must take any steps which he considers necessary to recover the amount due to him—his success or failure in no way affects the position of the underwriters.

Similarly the fact that the assured had paid the premium to brokers who had not paid underwriters will not relieve underwriters of their liability under the policy.

The broker is directly responsible to the insurer for the premium and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium. (Section 53 (1).)

Return of Premium.

The first circumstance which will entitle the assured to recover a sum paid to his underwriters as premium will be the fact that no liability has ever attached to the underwriters in respect of the goods insured. Goods may be insured from London to Shanghai and if it is discovered that through an error the goods have not been shipped, this would clearly entitle the assured to a return of the premium.

Or if quite innocently the assured has taken out a policy on goods which are in fact the property of some other person, the underwriters must return the premium provided that there has been no delay on the part of the assured in asking for its return.

In the event of the assured obtaining a policy by deliberate misrepresentation or fraud, the contract will be void but the premium will *not* be returnable.

If the risk attaches even for a shorter voyage than that specified in the policy, the underwriter will be entitled to the premium. Goods insured from Liverpool to Manila and sold by order of the assured at an intermediate port, say Barcelona, will not entitle him to recover any portion of the premium from his underwriter.

If a policy is taken out for £5,000 and goods to the value of only £2,500 are loaded on the vessel, underwriters will be liable for a return of premium on the goods valued at £2,500 which are not shipped and will reduce the liability on their policy by one-half.

The same course will be adopted in all cases where the value of the goods shipped is less than the value of the goods which it was intended to ship and a proportionate part of the premium is returnable.

The most complicated cases in connection with return of premium arise where the assured has over-insured the value of his goods and has effected policies at different times and the earlier policies have at one time borne the entire risk.

A case decided in 1841 well illustrates the mode of settlement which is adopted under these circumstances.

Cotton valued at £30,000 was insured by policies effected on April 12th for £20,000 and by policies effected on April 13th for £16,000—it was held that inasmuch as the policies effected on April 12th had been liable for £20,000, there was no return of premium due under these policies, but as the policies issued on April 13th had been liable for £10,000 only out of the total sum of £16,000, a return of premium was due on the £6,000 to which no liability had attached.

Double Insurance.

The most common cases of double insurance arise where buyer or seller, principal or agent, is in ignorance of the fact that the insurance has been arranged by the other party to the transaction.

Cable advice of large consignments of cotton may be sent from Bombay or the United States; the value of the cotton will doubtless be given but the fact of its insurance or non-insurance may quite easily be omitted.

If insurances are arranged on this side for the full value, say £20,000, and on the arrival of the mail it is found that insurances have already been arranged, the underwriters here will reduce the amount of their liability by one-half

and also return one-half of the premium, and the same procedure will be gone through in Bombay or the United States.

If the vessel should be totally lost, the assured can either recover the full £20,000 from one set of underwriters and assign to them his rights under the other policy or policies, or recover £10,000 from each.

Under-insurance.

Where goods are insured for less than their full value they are said to be under-insured and the assured is deemed to be his own insurer for the difference between the amount of the policy and the actual value.

The effect of under-insurance will be seen in the chapter on Particular Average.

CHAPTER V

WARRANTIES

Implied Warranties.

It may seem strange that there should be any conditions applying to the contract between assured and underwriters which are not plainly set out in the policy which is the evidence of that contract, but little consideration will show that there must be in any contract, based on good faith, conditions which it is not necessary to specify.

It was the old practice to consider that there were three implied warranties or three obligations resting on this consideration of good faith, which must be complied with to ensure the liability of the policy, but it is now customary to consider that there are two implied warranties only, and this is strictly in agreement with the Marine Insurance Act, where seaworthiness and legality only are dealt with in the sections devoted to warranties.

Deviation, which, before the passage of the Marine Insurance Act, was considered to be an implied warranty, is dealt with in Chapter VIII relating to the voyage.

Seaworthiness.

In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured (Section 39 (1)).

The term *seaworthy* is not the happiest one for the conditions to which in law it now extends, for not only must the vessel herself be in good condition, but she must be well and sufficiently manned. There must also be special provision for the trade in which the vessel is engaged, if special provision is required.

This last requirement is indeed an enlargement of the general idea of seaworthiness, when we consider that

although a vessel may be sound and staunch, a defect in her special fittings for a special trade will render her legally unseaworthy.

There is another word which perhaps more tersely and more accurately describes this requirement—the word *fitness*; and the substitution of the idea of fitness for the word *seaworthy* in the phraseology of the Act would give the following amended form—

In a voyage policy there is an implied warranty that at the commencement of the voyage the vessel shall be in all respects fit for the purpose of the particular adventure insured.

Where the policy attaches while the ship is in port there is also an implied warranty that she shall at the commencement of the risk be reasonably fit to encounter the ordinary perils of the port. (Section 39 (2).)

The onus of proof of unseaworthiness lies in all cases upon the underwriters and the difficulty of proof is well illustrated in the following case.

In 1874 a vessel whilst loading rice in the river near Rangoon, in ordinary weather, sank.

Evidence was given that the ship had been recently overhauled and repaired. There must have been some explanation of the loss, but as the underwriters were unable to state it the case was decided against them. If the assured in this case had been forced to prove that the vessel was seaworthy, he would have had difficulty in doing so, for the loss in ordinary weather pointed to some grave unknown defect in the vessel.

To the shipper, the most important points are contained in Section 40 (2).

> "In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy."

What constitutes reasonable fitness to carry goods? This will depend upon the nature of the trade in which the vessel

is engaged—a vessel might be perfectly equipped for the carriage of coal or minerals and be very ill equipped for the carriage of fine goods. It is necessary, therefore, to consider the nature of the cargo. If she is carrying frozen or chilled meat, she must be fully equipped with the necessary refrigerators, and refrigerating machinery; if she is carrying cotton goods, her holds must be prepared for their reception.

In the case of shipments of coal and minerals, little preparation will be required, but the vessel must be staunch and the coal or minerals must be properly loaded.

If, during loading operations, heavy cargo is thrown into the bottom of the hold, and as a result damage is done to the vessel to such an extent that she is unfit to perform the voyage, underwriters will not be liable for any loss which occurs after the vessel becomes unseaworthy.

If goods are shipped by vessels which are proved to have been unseaworthy, the shipper has no legal right of recovery from his underwriters, but it is now customary to insert in cargo insurances a provision that seaworthiness as between the assured and the insurer is admitted.

Legality.

"There is an implied warranty that the adventure insured is a lawful one and that so far as the assured can control the matter, the adventure shall be carried out in a lawful manner." (Section 41.)

A voyage may be illegal if it is the intention to defraud the Customs Authorities by means of smuggling or, in time of war, if it would result in trading with the enemy.

The cases in the latter category receive examination in the chapter on War Risks

Express Warranties.

"A warranty is a promise by which the assured undertakes that some particular thing shall or shall not be done

or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

"An express warranty must be included in, or written upon the policy, or must be contained in some document incorporated by reference into the policy." (Section 35.)

This definition distinguishes between a warranty which is understood and implied and one which it is necessary should be distinctly stated.

There must be literal and absolute compliance with all warranties to ensure the liability of underwriters; therefore if the words "Warranted to sail on or before August 28th" are inserted in the policy, the vessel must leave her moorings on or before that date with the intention of actually proceeding on the voyage. Express warranties are rarely met with in insurances on goods, but occasionally an underwriter, to limit his liability by one steamer under a floating policy, will insert the words, "Warranted not more than £..... by any one steamer." In cases where information regarding the position of a vessel at the time the insurance is effected is doubtful, underwriters may insert the clause, "Warranted free from claim for accident prior to date of acceptance." This will render the underwriter liable only for claims which arise in consequence of accident or accidents on and after the date on which he accepts the risk. Should therefore an insurance on a ship with nitrate or grain from the West Coast of South America be effected on August 21st, and a clause similar to the one quoted above be inserted in the policy, no liability would attach to underwriters if it was subsequently found that the vessel had been totally lost on August 20th or any other date prior to August 21st.

CHAPTER VI

THE POLICY

Form.

Lloyd's S. G. Policy.

BE IT KNOWN THAT as well in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause and them, and every of them, to be insured lost or not lost, at and from

Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the
whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called ; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship,

upon the said ship, &c.

and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever shall be arrived at

upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety ; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, &c., in this

voyage, to proceed and sail to and touch and stay at any ports or places whatsoever

without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants, and assigns to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is expressly declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises,

[Sue and labour clause.]

[Waiver clause.]

confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

IN WITNESS whereof we, the assurers, have subscribed our names and sums assured in London.

[Memorandum] N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent, and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent unless general, or the ship be stranded.

Wording of the Policy.

"This policy of insurance is a very strange instrument, as we all know and feel," was a remark made by Lord Mansfield, and from his day onwards the policy has met with scant praise from the judges of our courts.

The secret of its use in spite of adverse criticism lies in the fact that the merchant, having found that this document meets his requirements, is averse to a change of form which may in the slightest degree destroy the feeling of security which he possesses in relation to the present form.

The form of the policy is undoubtedly old, but years of litigation have fastened on to the phrases and words of the policy a distinct and well understood meaning which increases its value. This fact was recognized by the draughtsmen of the Marine Insurance Act, and no attempt was made to improve upon the form of Lloyd's Policy, which is the model upon which all Marine Insurance policies are based.

Arnould, writing in 1857, would seem to look forward to the time when the passing of an Act to codify the Law of Marine Insurance would also bring with it an opportunity for the introduction of a new form of policy, but it is generally admitted that the Act of 1906 does well to "let ill alone." Even a casual reading of the policy reveals the unsuitability of some of the clauses and conditions for insurances on ships alone, or on freight or cargo alone, but this difficulty is

overcome by writing in new conditions or clauses, or attaching printed clauses, or by means of rubber stamps adding new clauses to the policy, so that in its final form it expresses or is intended to express the intentions of both assured and underwriter.

This is a business document and, therefore, if it is used to cover a shipment of timber or tea or any other cargo where certain trade customs prevail, the document will be interpreted in the light of those special customs, provided that the terms of the policy do not render the appeal to custom unnecessary.

"Usage," said Lord Campbell, "may be relied upon to show the sense in which an expression found in a written contract is used in a particular trade; and a usage *consistent with a written contract* may be introduced into it, as both parties being aware of it may be supposed to have intended that it shall form part of their bargain. But to let in verbal evidence of a usage for the purpose of contradicting and nullifying an express written contract would be contrary to all principle, and has been forbidden as often as the attempt has been made."

There must be no question about the uniformity of the customs; the assured must prove beyond doubt that the usages are common to and well understood in the trade. But if underwriters and assured have in view in entering into the contract, some custom which is not a general custom of the trade but is restricted to the assured's method of dealing with his shipments, the fact that this custom was known to the underwriter would be sufficient to fix upon him full liability for any loss which resulted from its observance.

The underwriter will not be liable for goods which are carried on deck unless it can be proved that it is usual to carry *on deck* cargo of the same character as that which has been insured. This point came out clearly in an action brought by the *Apollinaris Co.* in 1904, when it was proved that cargo which had been carried on the deck of a river steamer had been carried in accordance with the prevailing custom. But in the absence of such a custom (and an underwriter

is assumed to have full knowledge of the general customs which govern the shipment of goods which are insured under his policy) the cargo must be stowed under deck, otherwise no liability will rest upon the underwriter.

It is a general principle that in the event of any doubt attaching to the meaning of any word or phrase employed in a contract, the person granting the contract must be the sufferer. On this principle the underwriter must be the sufferer if the words he usès have not clearly expressed his intentions. The policy is the form which he sends out, the clauses are the clauses he has himself inserted and agreed to, and, as more than one judge has said, he has the whole of the English language to select from in framing the contract in such a way that it will clearly express his meaning.

It is well understood that if any clause added to the policy contradicts the ordinary printed form, the addition overrides the printed form and the special clause is taken to express the intention of underwriters and assured.

It is impossible to improve upon the rules of construction which Lord Ellenborough laid down in the case of *Robertson* v. *French*. "The same rule of construction which applies to other instruments, applies equally to this, viz., that it is to be construed according to the sense and meaning, as collected in the first place from the terms used in it, which terms are to be understood in their plain, ordinary and popular sense, unless they have generally, in respect to the subject matter, as by the known usage of trade or the like, acquired a peculiar sense, distinct from the popular sense of the same words, or unless the context evidently points out that they must in the particular instance and in order to effectuate the immediate intention of the parties, be understood in some other special and peculiar sense."

Clauses of the Policy.

In considering the policy, the difficulties will be lessened if the conditions of the times in which it was evolved are borne in mind. In those days, not only did the merchant own the

ship in which his goods were carried, but he frequently travelled with them and was dependent to a large extent upon his own weapons and skill for the successful performance of the voyage in times of warfare or attack by enemies of the state.

The first words in the policy are

" Be it known that,"

The space following these words is intended for the insertion of the name of the assured who, according to the Act, is entitled to effect an insurance where " he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof." The application of this section has received treatment in the examination of Insurable Interest.

" as well in (their) own name as for and in the name or names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause—and them, and every of them."

This section is complicated in expression, but the intention is to admit to the benefit of the policy all parties who, at the time of the insurance or afterwards, stand in the same relationship to the property insured as did the original assured or the principal for whom he acted.

A case frequently referred to is a case heard in 1874, where a London Marine Insurance broker had effected a policy of insurance on the instructions of a person named Hagedorn, for the benefit of a foreign merchant who as a matter of fact had given no specific instructions to insure.

A loss occurred, and two years after, the merchant wrote to Hagedorn hoping that payment had been made by the underwriter. This expression of hope was held to be a valid adoption of the policy and the underwriters were deemed liable. An old case heard in the United States, which goes

far beyond any case heard in our own courts, is interesting as showing the limits to which the right to insure has been interpreted.

The agent in New York of a merchant resident at Cartagena, having effected an insurance for him without instructions, gave him notice of what he had done. The Cartagena merchant in reply said that if other insurances which he had ordered should not have been made, and if the ship should not have arrived safely, he wished the policy to stand, otherwise to be cancelled.

The ship was in fact totally lost, and in the courts in New York it was held that the ratification was sufficient, and in consequence the underwriters were liable for the full sum insured.

A policy must be ratified by the person intending to take advantage of its protection, as soon as he is aware of its existence. This may seem to clash with the first quoted case, but in that instance the merchant and agent would appear to have had a running account, and the letter, written two years after the loss, which was held to imply a previous authority to insure, was apparently a gentle reminder to the agent that the merchant had not been credited with the sum received from underwriters.

"Lost or Not Lost."

The words *"to be insured lost or not lost"* appear in a policy issued in 1613 on a shipment by the vessel *Tiger* from London to Zante and Barbary, and have been inserted in every common policy on goods issued since.

These words have great practical value, for they enable a merchant to obtain full protection for consignments which have been made to him and of which he has not received advice until after the sailing of the steamer by which they have been shipped. For example, a merchant who receives advice of the shipment of a large consignment of silk from China, some time after the sailing of the steamer will submit the risk to his underwriter. The underwriter will refer to the shipping papers, and finding a report that the vessel had passed,

say Suez, three days previously, will accept the risk. If the vessel is afterwards proved to have been lost before the time the underwriter accepted the risk, this will not allow him to repudiate liability.

Or, in the case of sailing vessels, the date of the last news recorded in the shipping papers may be, and frequently is, several weeks before the date on which the insurance is arranged and the policy issued—if the ship was lost even a month before the date on which the policy was issued, the underwriter would be liable.

If, however, the merchant had received definite information of the loss or had even heard a rumour of the loss before the insurance was completed and had not passed on this knowledge to the underwriter, the concealment would render the policy void and the premium would be forfeited.

And if the underwriter accepts a risk by a vessel which he knows has safely arrived and the assured is ignorant of her safe arrival, the underwriter would be held liable to return the premium.

The words "lost or not lost" are necessary now, but they were even more valuable in the days when news travelled slowly, steamers were unknown, and the cable and telegraph were not invented.

Although provision is made in the policy for the insertion of the master's name, it is extremely rare for this to be done. If it is represented that a vessel will sail under the command of a master of known ability, and the intention is to send her out under the command of an inferior man, this would, of course, constitute a breach of good faith, and would render the policy voidable.

It should be noted that the Marine Insurance Act stipulates that the policy must specify—

(1) The name of the assured, or of some person who effects the insurance on his behalf;

(2) The subject-matter insured and the risk insured against;

(3) The voyage, or period of time, or both, as the case may be, covered by the insurance;

(4) The sum or sums insured;

(5) The name or names of the insurers.

CHAPTER VII

INSURABLE VALUE

MARINE Insurance is a contract of indemnity and therefore all goods insured under a Marine Insurance policy should be insured for such a sum as will completely indemnify the assured in case of loss. Reference to the rules laid down in Section 16 (3) will show that no provision is made for the addition of profit, for the insurable value of goods or merchandise is to be the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole. The reason for this is that the Marine Insurance Act adopts the theory that the assured is completely indemnified if he is placed in the same position as if he had never made the shipment. But this section refers only to policies in which an agreed valuation has not been inserted, and in practice policies on goods are issued on a valuation mutually agreed between underwriter and assured.

The merchant who buys his goods in a foreign market does so with the intention of selling those goods at a price which will yield him a profit, and therefore as the policy is a business document it must contain such a valuation as will place him in exactly the same situation as he would have been in if no loss had taken place.

The profit is provided for in floating policies by issuing the policies on goods to be declared as shipped, at invoice cost plus charges and 10 per cent or some other agreed percentage for profit.

It is desirable that the assured should see that the clause does quite clearly express the method by which the goods are to be valued in the case of a loss before declaration.

In the case of *King* v. *Methuen* (1907) the contract contained the clause, " Invoice cost plus freight and insurance and 10

per cent (in the event of loss before declaration)," and the assured claimed, a loss having taken place before declaration, that he was entitled to recover a sum equal to the invoice cost *plus the freight which would have been payable at destination if the cargo had been delivered*, plus the insurance premium, plus 10 per cent on the whole cost, freight and insurance. But the counsel for the underwriter argued that the word " freight " was intended to apply only to freight which the assured had actually paid or had contracted to pay.

Lord Justice Vaughan Williams, in giving judgment, said that it was quite plain when one looked at the document that the parties were contemplating the possibility of a loss before declaration. It was common ground between the parties that the words, " Invoice cost plus freight and insurance and 10 per cent " constituted the mode of measurement of the loss. On one side it was said " freight " meant " freight at risk " and on the other that the word " freight " was a mere item in arriving at the total valuation. To his mind the word " freight " meant " freight at risk," and it could only be freight at risk if it was freight which had been paid or which the assured had contracted to pay whether or not the ship arrived at her destination. It was extremely desirable that insurances should not be allowed in respect of matters which were not interests of the insurer and were not at risk, otherwise insurance would come very near a bet or gamble.

Finally, he came to the conclusion that it was more likely that the parties intended that the assured should not be covered in respect of an interest which was never at risk than that he should.

This case illustrates the necessity for the use of terms which place the meaning of the contract beyond dispute. As Lord Justice Vaughan Williams said in the early part of his judgment, the parties had not chosen to make full use of the English language, for if they had done so, they could have stated the contract in such terms that a question of this sort would never have arisen.

Where the value of goods is inserted in the policy, only two circumstances will allow the question of valuation to be re-opened ; (1) Is it grossly excessive ? or (2) Is there proof of fraud ?

Cases under the first category are scarcely likely to arise in policies on goods now, for the merchant has nothing to gain by insuring for a sum greatly in excess of the agreed method of valuation. He knows that in the event of a claim the underwriter will require copies of the invoices and other documents before payment is made. And in these days of quick communication between all parts of the world, the difficulties which would beset the path of a person who intended to perpetrate a fraud are immeasurably greater than they were a century or more ago.

One of the most striking cases recorded is the case of *Haigh* v. *De la Cour*. In 1812 goods were insured for £5,000 ; the actual value was only £1,400. The invoices were proved to be fictitious, the bills of lading had been tampered with by the captain after signature. The ship was insured for a voyage to Pernambuco ; she actually went to the West Indies, where the cargo was disposed of by a person put on board by the assured.

The court decided that the goods had been fraudulently over-valued with the intention of cheating the underwriters, and therefore the assured were not entitled to recover even the actual value of the goods.

It is interesting to note that when the British Government entered the insurance business during the wars which commenced in 1914 and 1939 for the purpose of covering war perils, the most stringent rules were applied with regard to valuation. Whereas it had been customary in the open market to insure for as much as C.I.F. cost plus 25 per cent, the Government Office would not, generally speaking, grant a cover for more than C.I.F. value with 10 per cent added.

A system for computing insurable value on the basis of C.I.F. cost with 10 per cent added is given in Appendix G.

CHAPTER VIII

THE VOYAGE

ACCORDING to the wording of the policy no liability attaches to underwriters until goods are safely loaded on the vessel. Therefore where goods are sent from an interior town to a port and then by craft or lighter to the side of a steamer moored in a waterway, the policy would not attach until the goods were on board the steamer.

This would defeat the intentions of the shipper, for naturally he wishes to be fully protected from the time the goods leave his warehouse until they are safely delivered to the consignee. To meet his requirements, underwriters will probably attach clauses covering the goods from warehouse to warehouse, as outlined later in this chapter.

Irrespective of the risk from the interior, the modern policy form will contain a clause covering the risk of craft both to the vessel at her port of loading and from the vessel at her port of discharge.

This is done by the insertion of the clause "*Including the risk of craft,*" but this clause renders the underwriter liable for only the *ordinary* and *usual* lighterage; it does not throw upon him any liability for lighterage undertaken to convenience one cargo owner only.

Goods are frequently bought f.o.b. (free on board), i.e. they are not assumed to be delivered to, nor are they at the charge of, the assured until they are safely loaded on the vessel; or they may be bought f.a.s. (free alongside steamer), which means that they do not become the property of the assured until actually delivered alongside the steamer.

In each of these cases the liability of the underwriter does not begin until the goods are the property of the assured. The principles upon which the contract rests will not allow the assured to throw upon his underwriters a liability which does not attach to himself.

Termination of Risk.

The risk on goods will *terminate* when the goods are discharged and safely landed, but where it is customary to discharge into lighters, underwriters will be liable for only the usual lighterage between the vessel and the shore. Should a merchant send his own lighters a greater distance than is customary in order to obtain earlier possession of his goods, the liability of the underwriter will cease as soon as the owner takes control of his property.

Warehouse to Warehouse Clause.

Goods are now frequently insured from warehouse to warehouse, but the underwriter is liable only for goods which are sent forward in the customary manner and in the usual time. He will not be liable in the event of undue delay in the Custom House or on the quays.

The reader should note that there is an important exception in connection with the commencement and termination of war risks. Prior to the 1st February, 1938, policies usually provided that all the perils covered thereunder should terminate at the same time or place. As from that date underwriters have decided that policies which include the risk of war will cover that risk only as from the time the goods are loaded on the overseas vessel and continue until they are discharged overside from the overseas vessel. This matter is dealt with more fully in the chapter on War Risks.

The warehouse to warehouse clause reads—

This insurance attaches from the time the goods leave the warehouse and/or store at the place named in the policy for the commencement of the transit and continues during the ordinary course of transit, including customary transhipment if any, until the goods are discharged overside from the overseas vessel at the final port. Thereafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination

named in the policy or until the expiry of 15 days (or 30 days if the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overside of the goods hereby insured from the overseas vessel is completed. Held covered at a premium to be arranged in the event of transhipment, if any, other than as above and/or in the event of delay in excess of the above time limits arising from circumstances beyond the control of the assured.

In order that the assured may not be penalized for delay which arises from circumstances beyond his control, provision is made in the clause that he shall be held covered at a premium to be arranged. The clause undoubtedly gives the reasonable protection to which the shipper is entitled both during the oversea transit and to the final warehouse at destination.

Change of Voyage.

Where, after the commencement of the risk, the destination contemplated by the policy is voluntarily changed, there is said to be a "Change of Voyage," and in such a case the insurer is discharged from liability as from the time the change becomes apparent. It is immaterial whether the risk be increased or lessened by the change. (Section 45.)

The foregoing must not be confused with the case of a vessel which sails either from a different port of departure or to a different destination, for in such circumstances the risk does not attach. (Sections 43 and 44.)

The case of *Simon Israel & Co.* v. *Sedgwick* is the leading case on section 44. Goods were insured under a floating policy from the Mersey to any port or ports in Portugal and Spain, *West* of Gibraltar, and inserted in the policy was a clause *agreeing to hold the assured covered at a premium to be arranged in the event of deviation or change of voyage.*

The vessel in which the goods were shipped sailed from Liverpool on a voyage to Carthagena, which is *East* of Gibraltar and was lost on that portion of the voyage which is common

to vessels sailing to ports either East or West of Gibraltar. In view of the insertion of the clause referred to above, the assured offered to pay an extra premium for the extra risk, but the underwriters refused to accept it. The shippers brought an action to enforce payment; but it was decided that the deviation and change of voyage clause did not enter into the question, for the ship had sailed on a *different* voyage: therefore the policy had never attached.

Deviation or Delay.

Prior to the passing of the Marine Insurance Act, deviation was considered as an implied warranty.

The word "deviation" does not adequately express the full meaning, for not only must there be no actual change or variation of the voyage but there must be no extraordinary delay.

If there is unnecessary delay in the commencement of the voyage after the insurance is arranged, the delay may convert the voyage from a summer voyage to a winter voyage, or a winter voyage to a summer voyage. In either case the voyage would not be the voyage for which underwriters had issued their policy and therefore they would be relieved from all liability, even if the delay had resulted in what under ordinary circumstances would have been a reduction of the risk.

> "In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay becomes unreasonable." (Section 48.)

The popular belief that an underwriter will be liable until the goods are delivered, no matter how serious the delay may be, is erroneous.

If goods are taken out of a ship at a transhipping port, i.e. a port where a connection is to be made with a vessel which will carry the goods on to their destination, there must be no unnecessary delay.

Also where goods are insured under a policy which protects the assured from the time the goods leave his warehouse, there must be no unnecessary delay before the goods are loaded on the steamer or during the performance of the voyage.

Section 46 stipulates that where a ship, without lawful excuse, deviates from the route contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial whether the ship may have regained her route before any loss occurs.

Students should note that the intention to deviate is immaterial, and that there must be deviation in fact to discharge the insurer from his liability under the contract.

Deviation or delay is excused on the undermentioned grounds, with the proviso that when the cause excusing the deviation or delay ceases to operate the ship must resume her course and prosecute the voyage with reasonable dispatch. (Section 49.)

(*a*) Where authorized by any special term in the policy; or

(*b*) Where caused by circumstances beyond the control of the master and his employer; or

(*c*) Where reasonably necessary in order to comply with an express or implied warranty; or

(*d*) Where reasonably necessary for the safety of the ship or subject-matter insured; or

(*e*) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(*f*) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(*g*) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

The clause in the standard form of policy which reads, "*And it shall be lawful for the said ship, etc., in this voyage to proceed and sail to and touch and stay at any ports, or places, whatsoever, without prejudice to this insurance,*" is far more

restricted in its meaning than the words would appear to indicate. The ports or places at which the vessel calls must be the usual calling places on the recognized route for vessels engaged in that trade.

Deviation Clause.

It might be thought that the owner of goods is burdened with an onerous duty in keeping a watchful eye on the movements of the vessel carrying his shipment. In actual practice matters are facilitated by the inclusion of a Deviation Clause in the policy. The usual form is as follows—

> "Held covered at a premium to be arranged in case of deviation or change of voyage, or other variation of the adventure by reason of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment, or of any omission or error in the description of the interest vessel or voyage."

Thus it will be seen that the insured is covered for both deviation and change of voyage, and the only duty falling upon him is that prompt notice shall be given to his underwriter and any additional premium paid.

Liberties Clause.

This clause was introduced in 1936 and is ancillary to the Deviation Clause. It will be remembered that the League of Nations Assembly decided to apply "sanctions" in the Italo-Abyssinian dispute, and shipowners fearing that their vessels might be compelled to terminate voyages at places other than those mentioned in the Bill of Lading naturally protected themselves by the insertion of an appropriate clause in the Bill of Lading.

Underwriters on their part offered protection to the insured in the event of such a contingency and the Liberties Clause was introduced into the Institute Cargo and other clauses. It reads as follows—

> In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment

whereby such contract is terminated at a port or place other than the destination named therein, the goods are held covered in terms of the policy at a premium to be arranged until sold and delivered at such port or place, or notice be given to underwriters to terminate the policy, whichever first occurs; or, if the goods be forwarded to the destination named herein or to any other destination, until arrival at destination (subject to the provisions of clause 1 as to the period covered after discharge overside from the overseas vessel at final port); provided always that no liability shall attach to this policy for loss or damage occurring after the termination of such contract of affreightment and proximately caused by delay or inherent vice or nature of the subject-matter insured.

Wartime Extension Clauses.

Notwithstanding all that has already been written in this chapter with regard to the commencement and termination of the risk, delay and deviation, it should be noted that, as a wartime measure, the Institute Cargo Clauses (Wartime Extension), which were introduced in May 1942, were compulsorily incorporated in all voyage policies issued after the 15th May, 1943, and a suitable premium for the additional risks involved is incorporated in a surcharge which was introduced after the commencement of the war in 1939. The Wartime Extension Clauses are printed in Chapter XXVI, and it will be noted that the effect of them is to cover the goods from the time they leave the warehouse at the place named in the policy until delivered at the final warehouse at the destination named in the policy or to a substituted destination. The clauses also cover the goods during deviation, delay, forced discharge, reshipment, and transhipment, all without payment of any further premium, provided that the assured shall act with reasonable dispatch in all circumstances within his control. The Wartime Extension Clauses do not attach in respect of war perils, although it will be realized that the causes of delay, deviation or forced discharge will in all

probability be due to war conditions, such as disorganization of transport through air raids, or the requisitioning of the steamer by the Government for more important work.

It is a matter of conjecture as to the length of time that this arrangement will remain in force, but it will probably be retained until the world military and political situation becomes reasonably settled.

A certain amount of misunderstanding exists in connection with the cover provided by the Deviation, Liberties and War-time Extension Clauses. In every instance where these clauses are applicable the cover provided is restricted to the physical loss or damage of the interest insured by the perils mentioned in the policy.

The important point to be noted in this connection is that the ordinary form of policy or the clauses already mentioned cannot in any circumstances cover the insured against additional expenses incurred by reason of the abandonment of the voyage by the shipowner, the requisitioning of the vessel by the Government or any similar happening. The only occasions when expenses of reshipment can legitimately be claimed under the ordinary policy of marine insurance are when the cost of reshipment arises out of a peril insured thereunder, or because of General Average.

It having been made clear that the expenses of reshipment after a forced discharge, not arising from a peril insured against, are not recoverable under the ordinary form of policy, it may be stated that a special type of policy can be issued to cover these expenses. Generally speaking, it cannot be said that this form is very widely used.

CHAPTER IX

THE RISKS INSURED

BEFORE the necessity for the insurance of either ship or goods against marine risks can be realized, the relationship which exists between the parties who are interested in various ways in marine adventures must be clearly understood.

It can be well understood that the owner of a vessel, who takes steps to insure his ship for such a sum as will enable him, in the event of total loss, to obtain possession of a similar vessel, is only acting in the same manner and from the same prudent motives as the owner of valuable property who insures against fire.

In such cases there are only two parties to consider, the owner and the underwriters. But in the case of shipments of goods the issue is not so simple. The contract between the shipper and the shipowner is expressed in the Bill of Lading and this will contain a list of exceptions or excepted perils for which the shipowner admits no liability. The exceptions, originally three in number, "the act of God, the king's enemies and dangers of the seas," have been added to so freely that it has been said, "There seems now to be no other obligation on the shipowner than to receive the freight (i.e. the payment for the carriage of the goods)." But this quotation does not represent the position which now exists, as will be seen on reference to the Carriage of Goods by Sea Act, 1924.

The shipper who wishes to be fully protected, is forced to enter into a contract with underwriters, and the contract as expressed in the policy, must, to satisfy his requirements, accept liability for the risks from which the shipowner, by the terms of the Bill of Lading, is exempted.

It is essential therefore that a careful comparison should be made between the Bill of Lading and the policy, and the ideal position from the point of view of the shipper is reached

when he is able to recover from his underwriters all sums which he cannot recover from the shipowners.

The exceptions in general use are identical with the risks covered by the policy, and the interpretations which have been given to the terms under one contract are equally applicable to the other.

Perils of the Seas.

The policy reads: "*Touching the adventures and perils which we the assurers are contented to bear and to take upon us in this voyage; they are of the seas.*"

The policy is not liable for damage which arises from ordinary wear and tear during the voyage, but it is liable for damage caused by the violent action of the waves, or even as the result of direct contact between the cargo and salt water, arising from the negligence of a member of the crew.

For example, a ship was detained for a considerable time at a port. During the period of detention rats made holes in the bottom of the vessel and finally she was condemned. In this case it was held that underwriters were not liable for the loss of the ship, the condemnation being the natural and expected result of the detention. But where, by reason of the negligence of an engineer, sea water was allowed to get into the ship, this was held to be due to the perils of the seas.

These cases indicate the test of the liability of the policy for peril of the seas; the loss must arise from some accidental and unexpected cause.

Fire.

Fire on ship-board still remains one of the major risks of the sea and in recent years the modern vogue of decoration in some passenger liners has increased the risk of damage if a fire should occur. This danger is now being met by the fire-proofing of panelling and other interior fittings and by the installation of sprinklers.

In the early days of full-powered motor ships underwriters had cause to complain that the donkey boilers fitted in such vessels were inadequate and could not produce enough steam

to smother a fire in the holds, but this complaint has now been met by the installation of chemical, gas, and foam smothering apparatus for dealing with outbreaks of fire. Fortunately wireless telegraphy, and the speed with which assistance can be sent to vessels in distress, reduce the chances of the loss of human lives, but so far as the loss of property is concerned, fire is one of the most serious risks which an underwriter has to consider. The risk to-day does not arise from "candles unadvisedly used by the boys," but from the use of coal, oil, and electric power, and underwriters will be liable for damage to goods caused by fire which has originated through their use, or through the accidental setting on fire of the cargo. But they will not be liable for losses which arise in consequence of cargo being put on board in a damaged condition. Where a cargo of hemp was put on board and the whole shipment was destroyed by fire, caused through the damaged condition of the hemp when loaded, this was held to be a loss for which underwriters were not liable.

If fire is caused through the negligence of a member of the crew, underwriters are liable, for the direct cause of damage is not negligence but the action of *fire*.

Pirates, or Rovers.

The word *piracy* would seem to require no definition. It is surprising therefore to find that the meaning of the term was the subject of dispute in 1909, in the interesting case of the *Republic of Bolivia* v. *The Indemnity Mutual Marine Assurance Company, Ltd.*

On November 20th, 1900, a policy was issued on goods from Para to Puerto Alonzo and places on the River Acre, by the s.s. *Labrea*. On December 21st, 1900, the s.s. *Labrea* was stopped at Caqueta by a vessel called the s.s. *Solimoes* and the whole of the insured goods were taken out of her. The crew of the s.s. *Solimoes* were taking part in an organized revolutionary movement, and the point at issue between the assured and the assurance company was, whether the

action of a body of men acting for political purposes was piratical or not. Both Mr. Justice Pickford (before whom the case was first tried) and the Court of Appeal held that the test of piracy lies in the attitude of the men who commit the act. If they commit it for private gain or for the purpose of inflicting loss on a personal enemy, this is piracy, but if they take part in a military and political movement and a seizure of property is made, this is not piracy.

This distinction is no longer important, as in 1937 underwriters unanimously decided that piracy should be classified as a war risk and it thereby became a risk which was excluded if war risk was not covered by the policy.

War Risks. "Men-of-War, Enemies, &c." and Strikes Risks.

These are dealt with in Chapter X.

Thieves.

Originally the term *thieves* covered all losses which arose from robbery by persons who were not connected with the vessel, or from larceny or petty theft by persons employed on the vessel.

For many years the rule in English law, however, has been that the policy has only been held liable for losses caused by persons not connected with the vessel, who commit robbery with violence.

This is the view taken in the Act where the term "thieves" is stated not to cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passenger.

The word " robbery " which carries in its sound a suggestion of violence, would doubtless better express the risk which the policy is intended to cover.

Jettison.

Jettison is the throwing overboard of goods in order to save the vessel, and underwriters are liable for the jettison

of goods which have been carried in their proper place, i.e. stowed under deck, or which have been carried on deck in accordance with a custom of trade.

Should the shipowner carry on deck goods which it is not the custom of the trade to carry in this manner, he must, in the absence of special arrangements with the shipper, pay for any loss which arises in consequence of jettison. Where underwriters specially agree to insure goods stored on deck, it follows that they are liable for any loss by jettison.

If fruit or merchandise of a perishable nature should become putrid through delay on the voyage or through improper packing, and in consequence it should become necessary to throw it overboard, no liability will attach to underwriters unless they have agreed to cover this special risk.

Jettison will receive further attention in the chapter on General Average.

Barratry.

It would be an interesting study to examine all the cases which have been contested with reference to this term, but space will allow of only a brief review of a few typical cases.

Barratry may be defined as all wrong done by the master or the crew against the interests of the owners of the ship and goods, or to quote the definition given in the Act, the term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

England in 1804 was at war with Holland, and in that year an English ship was insured for a slaving voyage from Liverpool to the African coast, where she was to stay and trade, before proceeding to the West Indies. The captain on his arrival at the British settlements on the African Coast found that he could not dispose of his merchandise to advantage, so put into a Dutch fort on the coast, where he knew it was illegal for him to enter, and exchanged his cargo, which consisted of muskets, etc., for slaves.

On leaving the Dutch fort his vessel was seized by a British cruiser and condemned.

As the acts of the master were committed without the knowledge of the owners and the result had been to bring injury and loss upon them, it was held by the courts that the loss was a loss by barratry, and therefore one for which the underwriters were liable.

It seems scarcely credible that a little over a hundred years ago, a voyage for a purpose such as this should have been recognized as a legitimate branch of trade.

Another case in which a vessel was chartered to proceed direct from the West Indies to Liverpool illustrates an important point in connection with barratry—

The captain after getting out to sea plundered an American vessel, and afterwards captured another which he carried into Bermuda, where his own vessel was totally lost, together with her cargo.

It was agreed that the intention of the master was to benefit his owners, but it was held that however praiseworthy his *intentions*, the *result* of his actions was to inflict injury upon them and as he therefore acted against their interests, his action was a barratrous one, for which underwriters were liable.

If the master and crew engage in smuggling without the consent of the owners, this is barratry, but if the owners are guilty of gross negligence in not taking proper measures to prevent a repetition of the offence, the underwriters will not be held liable.

This was the decision in a case where a ship had been seized three times for three distinct acts of smuggling by the crew.

Where a vessel is taken out of her course by the barratrous conduct of the master or crew, this is a deviation which is specifically excused in Section 49 (g).

Another case (October, 1909) concerning barratry arose on a policy issued for a voyage to Nicaragua and back to the United Kingdom.

Whilst waiting for orders at a South American port, the captain was persuaded to carry a fellow-countryman and some of his goods to Cocos Islands. He returned to the mainland, loaded his cargo, and then returned to Cocos Islands.

On the first voyage, the ship stranded but got off again, on the second she stranded but received so much damage that she finally became a total loss.

The vessel deviated to the extent of 240 miles from the course she ought to have taken for her legitimate voyage, the captain received a payment of £40 for the performance of the voyage to Cocos Islands unknown to his owners, and Mr. Justice Hamilton found as a fact that the owners had no knowledge that the captain was going to Cocos Islands, and had not given him authority to go there. The voyages were deviations and were caused by the barratrous conduct of the master. Therefore the underwriters were liable under Section 49 (g).

These cases clearly indicate that the essence of a barratrous action is that it is an action done against the interests of the owners and without their knowledge.

Other Perils, etc.

"And of all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said goods, etc."

This clause covers only losses which are of a like kind to those named in the policy, and therefore is far more restricted in its application than is indicated by a literal reading of its terms. Thus in an old case where the captain of a vessel at the moment of being taken by an enemy threw overboard a quantity of dollars, it was held that underwriters were liable, as the loss was of like kind to loss by jettison. The remaining perils specifically mentioned in the policy are examined in the chapter on war risks, where they can be more fittingly considered.

It must be noted that the additions which are made to a policy in order that it may express the intentions of assured

and underwriters, may extend, modify, or nullify, the effect of the printed words in the policy. For example—

(1) The policy may contain clauses covering risks of theft, pilferage, and non-delivery, hook, oil, freshwater damage or breakage, which would render underwriters liable for any direct loss from these causes.
(2) The policy may expressly exclude one of the perils covered by the printed words.
(3) The addition of a clause such as the F.C. and S. clause will nullify the effect of the printed words in the policy.

It is manifestly impossible to examine all the clauses which have been inserted in policies from time to time to meet special contingencies, but the rules governing their interpretation are indicated in the chapter on " The Policy."

CHAPTER X

WAR AND STRIKES RISKS

IN the discussion of the perils insured against, consideration of the words "*men-of-war, enemies, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes and people of what nation, condition or quality soever,*" was deferred to this chapter, and as previously mentioned "piracy" has now been brought within the scope of "war risks."

Letters of Mart and Countermart.

These are terms which, for purely sentimental reasons, continue to appear in policies of marine insurance, but they indicate a risk which is not likely to trouble underwriters of the present day.

Letters of mart were powers granted by a ruler to persons who undertook to attack the enemies of the nation in revenge for losses which they had themselves suffered, and *letters of countermart* were powers granted by the opposing nation to other persons to resist and retaliate upon such attacks.

Our own wars with Spain about the time of the Armada, especially as depicted in the pages of Kingsley, furnish ready illustrations of the fact that such privateering became nothing more nor less than legalized piracy.

The Declaration of Paris of 1856 abolished privateering.

Men-of-War, Enemies, etc.

The remaining words all refer to losses which would arise during time of war or of unsettlement *en route* to or in the country to which the goods were consigned, or which arise from some action of a foreign power which result in loss or damage to the property insured.

When the newcomer to marine insurance approaches the subject of war risks he will find a collection of legal decisions

and clauses which purport to reduce the liability of underwriters and other clauses which tend to increase the liability of underwriters. He will also discover that the doctrine of proximate cause is not so simple as would appear from the definitions given in Chapter XI. It may be stated that even those who have been engaged in the business of marine insurance for many years were surprised by some of the judgments which have been given in war risk cases since 1939.

War Risks in the Printed Form of Policy.

Prior to 1914 it was generally agreed that the liability of underwriters for war losses would be restricted to payment for losses which were the direct result of *enemy action*. For example, sinking by gunfire or torpedo, capture at sea, or detention in an enemy port.

Restraint of Princes.

The very important case of *The British and Foreign Marine Insurance Co., Ltd.*; v. *Samuel Sanday & Co.*, has considerably enlarged this conception of war risks.

It is essential that the various points involved in this case should be considered and a brief summary is therefore given.

The firm of Sanday & Co. were merchants who shipped linseed and wheat from the River Plate in July, 1914, by two steamers, *St. Andrew* and *Orthia*, and insured the cargo under a policy covering war risks. The destination in each case was Hamburg.

On August 5th, 1914, a proclamation was issued prohibiting all trading with Germany on whom we had declared war the previous day.

On August 9th the *St. Andrew*, when off the Lizard, was stopped by a French cruiser and instructed to go to Falmouth. Here she received further instructions from the naval authorities to proceed to Liverpool and on arrival there the cargo was discharged. The *Orthia* called at St. Vincent and in accordance with instructions from the owners, who

acted on a suggestion from the Admiralty, proceeded to Glasgow. In each case the cargo was eventually sold.

It was argued for underwriters that no liability could fall upon them unless the vessels were forcibly prevented by enemy action from reaching their destination.

In his judgment in the House of Lords, Lord Loreburn said, "I am not pressed by the circumstance that force was neither exerted nor present, for force is in reserve behind every State command. It would be a strange law which deprived the assured, if otherwise entitled to his indemnity, upon the ground that he had not resisted, till the hand of power was laid upon him, an order which it was his duty to obey. If it were an order which he was not bound to obey and which he might have successfully resisted either by violence or by process of law, a question might arise whether or not there had been in fact a restraint. But that is outside the present case."

The further point was urged that the loss had not been of such a character as to constitute a loss within the definition of constructive total loss in Section 60 of the Act, which reads: "*there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable.*"

The definition of actual total loss in the Act reads: "Where the subject-matter insured is destroyed or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss."

It was argued that the linseed and wheat were in existence as linseed and wheat at the time of sale, and the loss which had resulted was entirely due to the difference in the market price at the place of sale in this country as compared with Hamburg.

The term "subject-matter insured" meant, according to the argument of counsel for underwriters, the actual cargo which was shipped, and so long as that existed in specie under the control of the assured there could be no question of actual or constructive total loss.

In reply to this argument the five Law Lords who gave their judgment on January 27th, 1916, were unanimously of opinion that the subject-matter insured must be interpreted as an insurance of cargo against loss by sea perils or by frustration of voyage. In effect both the thing insured and the voyage for which it is insured together form the subject-matter referred to throughout the Marine Insurance Act.

As the voyage could not be performed, owing to the operation of a peril insured against, the loss must be deemed to be one which came within the scope of underwriters' liability.

The final point that Restraint of Princes meant only restraint by power exerted by an enemy was also dismissed.

It was held that the fact that the prohibition made the voyage illegal was in itself a restraint, and it is immaterial whether the restraint is that exercised by force by an enemy or by lawful obedience of a subject to an act or proclamation issued by his Government.

Our proclamations against trading with the enemy are not confined to trade with those who are of enemy birth only.

> "Every party, in short, who resides and trades in a country is regarded, in mercantile law, as a subject of that country, and must take the advantages and disadvantages, whatever they may be, of the country of his residence." (*Arnould.*)
>
> "No position, in fact, is more clear than this, that if a person goes into a foreign country and engages in a trade there, he is considered a merchant of that country, and a subject to all civil purposes, whether that country be hostile or neutral." (*Kent.*)

Every English vessel which, in August, 1914, was carrying goods intended for a resident in Germany, and which by reason of the proclamation abandoned her voyage, gave the owners of the cargo the right to claim upon the underwriters for any loss which they suffered.

It will be seen that the case of Sanday & Co. had very far-reaching results upon the liability of underwriters as expressed in the printed form of policy as found in the First Schedule

of the Marine Insurance Act, so far as it relates to shipment to enemy ports by English vessels.

Frustration Clause.

The practical result of the *Sanday* case was to make underwriters reconsider their position. It was decided that a loss which partook of the nature of loss of market was not one which ought to be covered by a marine policy.

With the object of eliminating losses of this character the following clause was introduced—

"*Warranted free of any claim based upon loss of or frustration of the insured voyage or adventure caused by arrests, restraints, or detainments of kings, princes, or peoples.*"

The effect of this clause was to relieve underwriters of all liability in respect of loss of voyage or frustration of voyage or adventure which arises through circumstances similar to or analogous to those which prevailed in the *Sanday* case.

In dealing with the subject of deviation it was mentioned that a clause known as the Liberties Clause was evolved in 1936 and this clause gives the insured the right to cover his goods to destination if the shipowner took the liberty of terminating his contract of carriage at some other port or place. The Liberties Clause, in so far as it applies to war risks, has now been superseded by a new clause in the Institute War Risk Clauses which provides for cover to a substituted destination if arising from circumstances beyond the control of the assured, and that clause is discussed further on page 62.

British Cargo in Enemy Vessels.

The case of *Becker Gray & Co.* v. *London Assurance Corporation* is as important as the case of *Sanday & Co.*, and a brief summary is therefore given.

In June, 1914, Becker Gray & Co., British merchants, sold 800 bales of jute for shipment from Calcutta to Hamburg by

the *Kattenturm*, a German vessel. The purchasers were a firm of German merchants.

On August 5th the vessel put into Messina, and at a later date went on to Syracuse where the goods were eventually discharged.

It was not disputed that the reason for putting into these ports was to avoid capture by the French and English fleets.

Lord Justice Swinfen Eady, in his judgment in the Court of Appeal, made it clear that in his opinion there was a vital difference between this case and the case of Sanday & Co.

"It has never yet been held in England that by the mere force of the existence of a state of war all goods owned by British subjects on their way to ports which during the voyage have become enemy ports, even though in neutral ships or enemy ships, become constructive total losses, on the ground that trading with the enemy is restrained by what is deemed to be a restraint of princes."

The German captain was not bound to obey the British law, and the voyage to Hamburg was perfectly legal. The fear of capture made him decide to take refuge in a neutral port—the vessel put into Messina to avoid a peril and not in consequence of a peril.

During the hearing in the House of Lords, counsel for Becker Gray & Co. said that the loss arose through restraint by reason of the presence of allied warships in the Mediterranean, and argued that "one was not obliged to run one's head into the lion's mouth, pulling it out again before the jaws closed."

Lord Sumner: "The whole point is whether, when *you do not put* your head into the lion's mouth, but remain where you are, you remain where you are because you are a sensible man, or because a restraint has operated to tie you up there. My duty compels me to remain in the trenches watching the furious fire over 'No Man's Land.' I say I will not venture into 'No Man's Land' because it is a certainty that I shall be shot. So I remain in the trenches, whereby I catch a cold, whereof I die of pneumonia. Have I died of pneumonia

or have I died by machine guns within the meaning of my accident policy ?

"I should have been a good deal surprised (and may I say, disappointed) if the vessel had gone on her way and had escaped capture; but when or where that fate would have overtaken her, no one can tell . . . she might have avoided capture for many days, and for all that we know, she might have been lost by fire or stranding, or some cause unconnected with hostilities, before ever any enemy hove in sight."

On 29th October, 1917, the House of Lords confirmed the decision of the Court of Appeal in favour of the underwriters.

The strictness with which the doctrine of proximate cause was applied is fully illustrated in the points which emerge from Lord Sumner's questions and judgment.

Warlike Operations.

The judgments given on 12th July, 1920, by the House of Lords, in the cases which are known as the *Petersham* case and the *Matiana* case, established the final position so far as loss whilst sailing in convoy is concerned.

In the first case it was decided that the collision which led to the loss of the *Petersham* was entirely due to navigation in convoy at night without lights, and the loss was not due to warlike operations but to marine perils. The words of Lord Justice Atkin were quoted with approval. "It appears to be fallacious to identify the merchant vessels sailing with convoy with the warships which escort them. The warships are engaged in the warlike operation of protecting non-combatant vessels from the enemy. The merchant vessels are engaged in the peaceful operation of conveying merchandise by sea. *The sheep are not the shepherd and are not engaged in the operation of shepherding.*"

In the second case, the *Matiana*, the master of the vessel was bound to obey the orders of the officer commanding the convoy, who, with the object of avoiding attack, ordered the convoy to steer a more northerly course than the customary

course in time of peace. On 1st May, 1918, the *Matiana* stranded, and a few hours later was torpedoed by an enemy submarine. Several attempts were made to get the vessel off, but they failed, and on 5th May, during a gale, the vessel became a total loss.

By a majority it was held that this loss also must fall upon the underwriters on the marine policy.

The actual loss was caused by an ordinary sea peril—"stranding." The stranding on the reef was not an inevitable result of the order given by the commander of the escort.

The lengthy judgments in these cases should be carefully read, for they contain much that is invaluable in any attempt to estimate the respective liability under Marine and War risk policies.

During the War many vessels were under charter to the Government, and by the terms of the Charter-party were covered by the Admiralty against loss by War peril. But it is a matter of no importance whether the War risk be covered by underwriters or undertaken by the Admiralty; the dividing line between War loss and Marine loss must be determined on the lines of the two cases to which reference has been made.

In an earlier case, the *St. Oswald* and the *Suffren* (1918), both vessels were sailing without lights, but they were engaged on warlike operations, as they were proceeding to evacuate troops from Cape Helles, and therefore their mission was quite distinct from the carrying of ordinary merchandise or even Government stores. The loss was therefore a loss by war perils.

In a further group of cases, of which the *Instructor* is typical, it is made clear that where a vessel is sailing in convoy without lights, and is sunk by a vessel engaged in carrying troops or munitions of war, the loss must be attributed to war perils. (*Charente S.S. Co.*, Court of Appeal, 13th March, 1922.)

The most important case that has yet arisen since the commencement of the 1939 World War is that of the

Yorkshire Dale Steamship Co. v. *The Ministry of War Transport* regarding the damage sustained by the steamer *Coxwold*. The vessel was admittedly engaged on a warlike operation and was, in fact, on a zig-zag course without lights. An alteration of course was made under orders of the commodore of the convoy to avoid what was thought to be an enemy submarine, and in consequence of this the vessel lost her position in the convoy.

In the first instance an arbitrator had found that there was no negligent navigation on the part of the *Coxwold* and the course steered appeared to be a safe one, but owing to an unexpected and unexplained tidal set, which carried the *Coxwold* some miles off her course, she sustained damage by stranding. The arbitrator found this was not due to negligence and was the direct consequence of a warlike operation. The case eventually found its way to the House of Lords, where the arbitrator's decision was upheld.

The effect of this decision was that if a vessel was engaged in a warlike operation it might be said that every casualty she sustained would be under the heading of war risks, and that it would therefore be unnecessary to cover the ordinary perils of the sea such as fire, stranding, heavy weather, and the like.

In order that no doubts should arise in cases of this character, it was decided to amend the wording of the F. C. & S. and War Risk Clauses so that losses similar to that of the *Coxwold* would be covered as an ordinary peril of the sea and not as a war loss.

Present Form of War Risk Clauses.

It will be noted from the standard form of policy printed in Chapter VI that it covers the risks of war, but in actual practice the policy is always printed with a marginal or overriding clause known as the F. C. & S. Clause (Free of Capture and Seizure) which excludes the risks of war from the scope of the policy.

In former times it was the custom to delete the F. C. & S.

clause when it was desired to include war risks, thereby re-instating the policy to its original form.

Later, however, the inclusion of war risks was accomplished by attaching a further clause to the policy. This clause is, in effect, the F. C. & S. Clause, with a preamble which reads as follows—

"*This policy covers the risks excluded by the following Clause.*"

The F. C. & S. Clause itself now reads as follows—

"Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there is a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty 'power' includes any authority maintaining naval, military, or air forces in association with a power.

"Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy."

The clauses mentioned above, with the preamble, form part of the Institute War Risk Clauses which are to-day almost universally used.

The Institute War Risk Clauses contain several provisions with regard to the duration of the cover. In 1937 clauses were introduced limiting the war risk for the period whilst the goods were on board the ocean-going vessel. These clauses have been modified from time to time and, broadly speaking, they

now cover the goods whilst waterborne, whether on board craft, barge or lighter, or the ocean-going vessel. The current clauses with regard to the duration of risk, now provide that cover shall include—

(i) transit by craft to or from the vessel;

(ii) deviation, delay, forced discharge, re-shipment and transhipment;

(iii) any other variation of the adventure arising from the exercise of a liberty granted to the shipowner or charterer under the contract of affreightment.

It will be noted that clause (ii) above provides for continuity of the cover in consequence of forced discharge and a voyage to a substituted destination is covered by a further clause which reads as follows—

"In the event of the interest hereby insured being discharged at a port or place other than the destination named herein, in circumstances beyond the control of the assured, the insurance continues until the interest is sold and delivered at such port or place; or, if the interest be not sold but forwarded by vessel or craft to the destination named herein, or to any other destination, the insurance continues until the vessel or craft arrives at the original or substituted final port or place of discharge and thereafter as provided in Clause 3." (See page 154 for Clause 3.)

In Chapter VIII, dealing with the duration of the voyage, it is mentioned that the Wartime Extension Clauses do not attach in respect of war perils, and the limitations with regard to land risk will be noted so far as the Institute War Risk Clauses are concerned.

It must be mentioned that when the risks of war are included in an open cover or floating policy, these risks will always be rated separately from the ordinary marine risks, and will in any case be subject to notice of cancellation, which shall not exceed seven days.

Alien Enemies.

It is illegal for a policy of Marine Insurance to be granted to an alien enemy. In the case of *Furtado* v. *Rogers* heard a century ago: "The question is," said Lord [illegible]ney, "whether it be competent to an English underwriter to indemnify persons who are engaged in war with his own sovereign, from the consequences of that war; and we are all of opinion that, on the principles of English law, it is not competent to any subject to enter into a contract to do anything which may be detrimental to the interests of his own country, and that such contract is as much prohibited as if it had been expressly forbidden by Act of Parliament."

In the numerous proclamations issued during wartime, it has been made perfectly clear that no person is allowed to send any money out of the country to an alien enemy, and this applies to both contracts completed before the war and contracts not fulfilled. This is an enlargement of the rule laid down in the case cited above.

Marine or War Loss.

Wars have always brought many problems to merchants and underwriters, and amongst them the question of the cause of loss in the case of missing vessels.

Where both the Marine and War Risks are covered with the same underwriters, the liability of the underwriters is clear and beyond dispute.

It was, however, a common practice to insure the Marine Risks with one company or body of underwriters and insure the War Risk either under the State War Risk Scheme, which is referred to later, or with a distinct set of underwriters.

In the case of a missing vessel which is known to have been in the neighbourhood of a mine-field or a region which has been within the zone of the operations of a submarine, there is a grave doubt as to the exact cause of loss.

The legal method is to take the matter before the courts and in some cases this has been done.

It was never contemplated when the Marine Insurance Act was framed that there would be any division between the war and marine risks. A solution to the settlement of losses arising from unexplained causes has been found under an agreement between Marine and War Risk underwriters. By this means, the assured obtains a prompt settlement of his claim, and if any difficulties should arise between the two sets of underwriters the necessary machinery is in existence for settlement by arbitration.

In this manner it is possible to avoid the delay which is a necessary part of a legal action, and with the right men as arbitrators it gives at least as much satisfaction as a verdict obtained in the courts.

There have been several cases where, by damage which is the result of a *war peril*, there has been a considerable enhancement of the *marine perils* through deviation which has become necessary in order to effect repairs at a suitable port. In addition to the extension of the voyage there is also the risk of damage to cargo during discharge. Section 59 of the Act, which states that the liability of the insured continues notwithstanding the landing or transhipment, refers exclusively to an interruption of the voyage, which is the result *of a peril insured against.*

Belligerents and Neutrals.

Since 1877, there have been a number of instances where warfare has taken place without formal declaration of war, and the words "whether there be a declaration of war or not" in the F.C. & S. clause are therefore important and necessary. In time of war the nations are divided into belligerents, i.e. nations which are taking an active part in the war, and neutrals, i.e. nations not participating in the warfare. But even neutrals are allowed to furnish the belligerents with means of carrying on warfare so long as they are prepared to run the risk of capture by the opposing forces. If a vessel is engaged in such a trade and it is intended to effect insurances on goods which are shipped by her, it is the duty of the shipper to inform

his underwriters of all the circumstances connected with the voyage, so far as they are known to him, otherwise the underwriters are relieved from all liability.

The nature of the goods must also be correctly described in the policy, for the assured is naturally not at liberty to insure goods under a misleading description. But if the goods are correctly declared and they are shipped by a vessel which is captured and condemned, underwriters are liable provided there has been no concealment of material facts.

Goods Warranted Neutral.

If, however, the goods are *warranted neutral*, "there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk" (Section 36 (1)). Y and Z may be at war, and if a vessel sails from X (a neutral) to Y with false papers (i.e. papers specially prepared to mislead search parties which may be put on board by Z) and no mention is made of the conditions under which she is sailing by the shipper who takes out policies on goods, although all the facts are known to him, underwriters will not be liable in event of loss. But if all the circumstances are communicated to underwriters, they will be liable. And they will also be liable if the shipper had no knowledge of the true circumstances attending the performance of the voyage.

Strikes, Riots, and Civil Commotions.

The form of the F.C. & S. clause in use until 1912 contained the words "riots and civil commotions." There is little doubt that these words, which do not refer to any risk covered by the original form of policy, were inserted with the intention of making it clear to the assured that riots and civil commotions were outside the scope of the contract.

This point, owing to the prevalance of labour troubles in 1912, seemed to demand greater emphasis and the following

clause, commonly known as the S.R. & C.C. Clause (Strikes, Riot, and Civil Commotions Clause) came into general use.

"*Warranted free of loss or damage caused by strikers, locked out workmen, or persons taking part in labour disturbances, or riots, or civil commotions.*"

This now appears in the policy, and should the assured wish to protect himself against losses excepted by the terms of this clause, it will be necessary for him to make a special agreement with his underwriters to that effect.

The present method of covering strike risks is similar to that followed in the case of war risks. The S.R. & C.C. Clause is deleted and a new clause is attached to the policy to make it clear that the exclusions in respect of strike risks are reinstated. A full copy of the Institute Strike Risk Clauses is printed in Chapter XXVI.

Strike risks, unless insured in conjunction with war risks at an inclusive rate, are rated separately from the ordinary marine risks and, when included in an open cover or floating policy, are always subject to thirty days' notice of cancellation.

When dealing with war risks it was mentioned that the Wartime Extension Clauses did not apply thereto, but strike risks are usually covered for the same duration as the ordinary perils covered by the policy.

State War Risks Scheme.

In August, 1914, the British Government opened an office for the insurance of war risks in respect of both hulls of vessels and cargoes, and the scheme achieved marked success.

Upon the outbreak of war in 1939 it became imperative that the Government should again undertake the insurance of war risks, for it was obviously impracticable for private insurers to give complete cover when it was possible that the losses from aerial and submarine warfare might prove disastrous. Thus, the Government Office became the principal insurer in respect of shipments to and from the United Kingdom.

It has already been mentioned in the chapter on insurable

values that the Government Office applied stringent rules with regard to the valuation for insurance and, generally speaking, would not grant cover for more than the C.I.F. value of goods, with 10 per cent added. It was possible for merchants to cover amounts in excess of this valuation with company or Lloyd's underwriters, who were able to cover war risks if they so desired, but only on the understanding that their rates were not competitive with those charged by the Government Office.

The method of insuring cargo with the Government Office was for the merchant to apply to his own insurance company or broker, who negotiated the business with the Government Office in London.

As strike risks are generally coupled with war risks, the certificate issued by the Government Office covered both perils, and it was agreed that if the marine policy covered the interest from or to the interior of a country the Government certificate would afford cover for the same period in so far as it applied to strike risks.

CHAPTER XI

THE DOCTRINE OF PROXIMATE CAUSE

Losses are recoverable under a Marine Insurance Policy only when the *proximate* cause of loss is one of the risks insured against. This rule *includes* all losses which are caused by one of the perils insured against, even though the loss could not possibly have been caused but for the operation of some cause or agency which lies outside the scope of the contract. Section 55 (2) (c) states—

"Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils."

But in the event of rats doing such injury to a vessel that sea-water comes in contact with and causes damage to cargo, the policy would be liable, for underwriters are liable for any damage which is caused through the action of salt water.

In the same manner underwriters may be liable for losses which arise from causes which come into operation through the misconduct or negligence of the master or crew. In many cases the primary cause of fire must be the carelessness of some member of the crew, but however great a hardship it may seem that any party to a contract should be penalized through the action of third persons, this will not allow underwriters to escape liability. If, however, the assured by his wilful misconduct is responsible for the loss, no liability will rest upon underwriters; the fundamental principle of good faith which lies at the root of the contract will debar either assured or underwriter from benefiting by his own misdeeds.

The position of the assured is quite distinct from the position

of the crew. The latter have no interest in the contract and however great their negligence, they do not reap any advantage from it.

Should the cause of their misconduct, however, be a direct result of acts committed under instructions received from the assured, this would legally be a loss for which the assured must accept all responsibility, and if his intention in issuing his instructions was to commit fraud upon his underwriters, the policy would be void. The losses caused by the misconduct of master or crew for which underwriters are liable must be acts committed without the knowledge and consent of the assured.

The Doctrine in Practice.

In practice the doctrine of proximate cause, or *causa proxima*, presents many difficulties, for where several causes have been at work, it is difficult to determine the cause which would legally be deemed the proximate one.

A decision of the Court of Appeal in February, 1909, in the case of *Etherington* v. *The Lancashire and Yorkshire Accident Insurance Company*, which was a case regarding the liability on a policy issued to cover the risk of death from accident, would appear to establish the principle that where one event is followed naturally and inevitably by certain consequences, the whole must be deemed the proximate cause.

This judgment which will probably be held to govern Marine Contracts also, will simplify some of the difficulties in applying the principle of *causa proxima*.

But in the case of *Montoya* v. *London Assurance Corporation* very much the same theory seems to have been acted upon, although the decision in this case was given without any full explanation of the reasoning by which the decision had been arrived at.

In this case, a ship carried a cargo of hides and tobacco; sea-water damaged the hides and as a result of the fumes given off by the rotting hides the tobacco was rendered unfit for use. It was held that this was a loss proximately caused

by perils of the sea, and in view of the fact that the tobacco was never in contact with sea-water, the chain of reasoning must have been that the action of salt water on the hides had naturally and inevitably resulted in damage to the tobacco.

Again, in the case of the *Thrunscoe* (1897), the ship's ventilators had to be closed in bad weather and the resultant condensation injured the cargo, and the damage was found to be caused by a peril of the sea.

The policy is not liable for any loss proximately caused by delay, although the delay is caused by a peril insured against, and therefore where a vessel was forced to discharge a cargo of a perishable nature, owing to damage received in collision, underwriters were not held liable for the damage caused by delay.

Definition.

It is difficult to frame a definition which will cover every case involving the application of the doctrine of proximate cause, but the following attempt to do so may be useful—

(1) Where the loss is caused by the operation of one peril, and that a peril insured against, there is liability under the policy.

(2) Where two or more causes are in operation, and the effective cause is a risk covered by the policy, underwriters are liable.

(3) Where several causes are in operation and the dominant or paramount cause is a risk covered by the policy, the underwriters are liable. The important judgment by Lord Shaw in the case of *Leyland Shipping Co., Ltd.*, v. *Norwich Union Fire Insurance Society, Ltd.* (1921), from which the following is an extract, will repay careful study—

" To treat *proxima causa* as the cause which is nearest in time is out of the question. Causes are spoken of as if they were as distinct from one another as beads in a row or links in a

chain, but—if this metaphysical topic has to be referred to—it is not wholly so. The chain of causation is a handy expression, but the figure is inadequate. Causation is not a chain but a net. At each point influences, forces, events, precedent and simultaneous, meet, and the radiation from each point extends infinitely. At the point where these various influences meet it is for the judgment as upon a matter of fact to declare which of the causes thus joined at the point of effect was the proximate and which was the remote cause.

"What does 'proximate' here mean? To treat proximate cause as if it was the cause which is proximate in time is, as I have said, out of the question. The cause which is truly proximate is that which is proximate in efficiency. That efficiency may have been preserved although other causes may meantime have sprung up, which have yet not destroyed it, or truly impaired it, and it may culminate in a result of which it still remains the real efficient cause to which the event can be ascribed."

Since the codification of Marine Insurance Law by the Act of 1906, there have been comparatively few lawsuits regarding proximate cause of losses arising out of marine perils.

On the other hand, the wars of 1914 and 1939 have produced a large amount of litigation on the doctrine of *causa proxima* and its application to losses by war perils, and these have been referred to in Chapter X dealing with War Risks.

CHAPTER XII

TOTAL LOSS

In discussing the losses for which a Marine Insurance Policy is liable, it is natural to examine first those losses which constitute a total loss and which entitle the assured to recover from his underwriters the full sum insured.

There are two kinds of total loss: actual total loss and constructive total loss.

Actual Total Loss.

Section 57 (1) defines an actual total loss as having occurred when the subject matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof.

The first part of the definition "when the subject matter is destroyed," scarcely requires any explanation, and examples of losses which fall within the limits of this, the simplest form of total loss, are readily given.

A ship and her cargo may be totally destroyed by fire, or may founder at sea, and on the happening of either of these events the assured would be able to recover from his underwriter the full insured value of the property destroyed.

But thoroughly to grasp that portion of the definition which states that there is an actual total loss when the subject matter is so damaged as to cease to be a thing of the kind insured, we must understand clearly the position of the underwriter in relation to the contract into which he has entered. He undertakes that cargo shall reach its destination as cargo of the same nature as the cargo which he has insured. Therefore if it is so damaged by one of the perils against which the policy agrees to protect the assured, that the cargo is certain to change its nature and become a thing of a different kind before the arrival of the vessel at her destination, the underwriter must pay the total insured value.

This principle was first acted upon in the case of *Roux* v. *Salvador*.

A shipment of hides, value £1,117, was insured from Valparaiso to Bordeaux. When the vessel arrived at Rio de Janeiro it was discovered that the hides were so damaged by sea-water, which had entered the hold in consequence of the leaky condition of the vessel, that it was certain that before the vessel arrived at Bordeaux, the hides would have ceased to exist as hides and would have become a mass of putrified matter.

Under these circumstances the hides were sold for £273. It was held that underwriters were liable for a total loss.

" In the case before us," said Lord Abinger, " the jury have found that the hides were so damaged by the perils of the sea, that they never could have arrived in the form of hides. By the process of fermentation and putrefaction which had commenced, a total destruction of them before their arrival at their port of destination became as inevitable as if they had been cast into the sea or consumed by fire. Their destruction not being consummated at the time they were taken out of the vessel, they became in that state a salvage for the benefit of the party who was to sustain the loss and were accordingly sold . . . It appears to us therefore that this was a case of absolute total loss of the goods ; they could never arrive."

The fact that the hides were sold as hides, or, to use the technical phrase which is used to describe goods which retain their nature, *in specie*, does not affect the principle. The test lies not in the state of the property insured either at the time the damage occurred or at the time of sale, but in the condition in which it would arrive at its destination. There must, of course, be no doubt about the facts. The *probable* condition in which the property will reach its destination is not to be regarded ; there must be absolute certainty that the interest insured will have no market value under the description given to it in the policy.

The hides would doubtless have had some value as manure on arrival at Bordeaux, but in the light of the doctrine acted upon in our courts and now so clearly expressed in the Act, we see this fact has no bearing upon the principle involved.

Sugar might be so damaged by sea water that its character is completely changed, or cotton goods under exceptional circumstances be wetted to such an extent that they would have no value as cotton goods.

In each of these cases underwriters would be liable for the full insured value, provided that the cause of the damage was one of the perils insured against. Even where goods are said to be destroyed, it is possible that the destruction may not be absolute and complete. In the case of a vessel which is destroyed by fire at sea, the charred ashes remain, or where a vessel founders, some of her cargo may be washed ashore. The ashes and the remnants of the cargo which are washed ashore may have no market value, but the theory which does not regard their existence would seem to lead naturally and logically to the principle which disregards the existence of the subject-matter insured as a thing of a different kind.

The definition also states that where the assured is irretrievably deprived of the subject-matter insured there is an actual total loss.

In the case of a ship which is carried inland by the force of a tidal wave so that it is physically impossible to use her as a carrier of cargo on the seas, the assured would be entitled to consider his vessel an actual total loss. And in the case of goods, if they are so situated that it is impossible for them to be delivered at their destination, this will constitute an actual total loss.

The words of Lord Abinger in the case of *Roux* v. *Salvador* express in the clearest language the whole principles of actual total loss.

"The underwriters engage that the subject of insurance shall arrive in safety at its destined termination. If, in the

progress of the voyage, it becomes totally destroyed or annihilated, or if it be placed, by reason of the perils against which he insures, in such a position that it is wholly out of the power of the assured or of the underwriter to procure its arrival, he is bound by the very letter of his contract to pay the sum insured."

Overdue Vessels.

Section 58 states that where the ship concerned in the adventure is missing and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

In normal times many newspapers publish a list of overdue vessels and the existence of a market for the insurance of vessels which have taken more than the expected time over a voyage or portion of a voyage, is common knowledge. Should any person interested in one of the vessels wish to insure against total loss, he will find that the underwriters at Lloyd's who specialize in the overdue market will naturally demand a premium greatly in excess of the premium at which the risk could have been placed before the vessel became overdue.

The premium usually demanded for a vessel on the first day she appears in the overdue list is Gs 5%; should several days pass without news the premium will increase, unt ilafter a further lapse of time, the prospects of her arrival are so dim that she is announced to be uninsurable and finally she is posted as missing. This announcement signifies that all hope of her arrival is abandoned, and underwriters prepare to meet their claims.

To take one instance only, this is precisely the course which was taken with respect to the *Waratah* which left Natal on 26th July, 1909, for Table Bay with about 300 passengers and crew. In view of her non-arrival at Table Bay the rate of premium rapidly increased until finally she was posted as missing, and claims on the steamer, cargo, and freight were settled for the full amount covered by the policies.

The same procedure has been adopted in countless other instances where a vessel has never arrived at her destination.

On the Continent a vessel is presumed to be lost after the lapse of fixed periods of time, but in England this practice is not followed.

Before settling claims for total loss on goods, underwriters will require invoices and bills of lading as proof that the interest was actually on board at the time of loss. Should any of the crew be saved, it is necessary that the survivors should give a detailed account of the loss to a Consul or Notary, who will draw up a document known as the "protest."

It is the custom of underwriters to retain policies on which claims for total loss have been paid.

Constructive Total Loss.

This form of total loss arises when by one of the perils covered by the policy it becomes impossible profitably to carry the interest insured to its destination.

To quote again from Lord Abinger in the case of *Roux* v. *Salvador*: "There may be some other peril which renders the ship innavigable, without any reasonable hope of repair or by which the goods are totally lost or so damaged that they are not worth the expense of bringing them, or what remains of them, to their destination." In the illustration used of a vessel being carried some distance inland by the force of a tidal wave and left in such a position that there was not the slightest prospect of her ever being reached again by the sea, it might be possible to break her up and carry away every particle of the vessel. But it would be impossible to contend that the mass of timber and iron which was the result was the same thing as that carried by the force of the tidal wave out of its proper element, the sea. The material would be there but it would no more be the vessel than a careful collection of every fragment of a piece of statuary, which had fallen and broken into numerous pieces, would be the thing destroyed: a vessel under these conditions would be an actual total loss.

If, however, she is loaded with a cargo of, say, Manchester goods, which, in spite of the casualty to the vessel, have suffered little or no damage—then if the cost of conveying that cargo from the vessel to its destination amounts to more than the value of the goods at their destination, it has become commercially impossible to complete the voyage. Again, in the case of the hides sold at Rio, if by any process it would have been possible to restore the hides to their original condition, if the cost of so doing would amount to more than the value at destination, the completion of the adventure would become commercially impossible. The distinction between actual total loss and constructive total loss has been well defined as the difference between physical impossibility and mercantile impossibility, a distinction which is clearly seen in the illustrations. In the case of the ship it is physically impossible to move her as a ship, and in the case of her cargo, it is a mercantile impossibility to complete the voyage, for the cost of so doing would be prohibitive.

As a general rule, the assured is justified in considering his goods a constructive total loss when he finds that he would incur financial loss by retaining possession of them. The test in nearly all cases is, would the expense entailed be greater than the value of the property after its recovery? If the total expenses, from the moment steps are taken to remove the goods from the vessel to the time of arrival at the destination, would be greater than the value of the goods on arrival, underwriters must pay the full insured value.

The expenses which would be taken into account would be the cost of unloading the cargo, the cost of warehousing and reconditioning it, the cost of forwarding to destination, and any other charges which would fall upon the assured owing directly or indirectly to the fact that the original course of the voyage had been broken up.

When the assured has decided that he would not be acting prudently in retaining possession of his goods, he must make a definite offer to his underwriters that he is prepared to give up

unconditionally all claim upon his goods and to endow them with all his rights in return for the payment of the full insured value.

> "The notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject matter insured unconditionally to the insurer." (Section 62 (2).)

But the assured must act in this manner only when the information which he has received of the loss has come to him through a channel upon which he can depend. The news or report may prove eventually to be unfounded and in these cases the assured derives no benefit from his offer to abandon, for it is obviously impossible to abandon property on the ground that it is in a state of peril, when it has not been in danger during the whole course of the voyage. "The effect of an offer of abandonment," said Lord Ellenborough, "is that, if it appears to have been properly made upon supposed facts, which turn out to be true, the assured has put himself in a condition to insist on his abandonment. But it is not enough that it was made properly on assumed facts, if it turns out that none such existed; it may be said to be properly made upon notice received, and *bona fide* credited by the assured, of the ship having been wrecked, whether such intelligence were true or not and although the letter conveying it turns out to be a forgery; yet clearly no right of action would rest in him, founded upon an abandonment made on false intelligence. If the facts be all imaginary and founded on misconception, the whole foundation of the abandonment fails."

It is usual for an underwriter to refuse to accept notice of abandonment, and, to enforce his claim, the assured must take out a writ against them unless the underwriter, in his letter of refusal, agrees to place the assured in the same position as if a writ had been issued.

It is important to notice that it is the condition of the property insured at the time of the issue of the writ which determines the question whether or not there is a constructive total loss, and not the position at the time notice of abandonment is tendered.

A vessel may be stranded in such a position that at the time of tendering notice of abandonment there seems little prospect of saving either ship or cargo, and yet may have floated off, and on examination both vessel and goods may prove to have sustained little damage by the time the writ is issued. In such a case the assured can only recover on the basis of a partial loss.

Waiver Clause.

The interests of both assured and underwriters are protected, whilst negotiations are in progress regarding abandonment, by the clause known as the Waiver Clause, which appears in the standard form of policy. This clause reads as follows—

> "It is expressly declared and agreed that no act of the insurer or insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment."

Where the assured have given notice of abandonment to their underwriters, and underwriters under the powers given to them in the waiver clause have succeeded in converting the loss from a total loss to a partial loss, they will still be liable for payment of a total loss. They are not allowed to bring about such a change of conditions as will deprive the assured of any rights which he possessed at the time of tendering notice of abandonment. This is the one exception to the general rule that the conditions prevailing at the time when legal proceedings are commenced, are the conditions which must be taken into account and not the conditions at the time notice of abandonment is tendered.

In all cases the insured value, *unless there is a special stipulation to the contrary in the policy*, is not taken into account

in ascertaining whether the loss amounts to a constructive total loss. Goods which are actually worth £5,000 may only be insured for £3,000, yet the damage must amount to £5,000 to entitle the assured to recover the insured value. Or goods which are insured for £5,000 may be worth only £4,500 and damage to this extent would enable the assured to recover £5,000 from his underwriters. By the term "damage" is meant not only the amount of actual physical damage but the expenses which would fall upon the assured in consequence of the casualty.

Difference Between Actual and Constructive Total Loss.

The difference between actual and constructive total loss is clearly brought out by a simple illustration. Suppose a quantity of tobacco is so damaged by one of the perils insured against under the policy, that it no longer exists as tobacco, or that it will have ceased to have a market value as tobacco before arrival at its destination, this is an actual total loss and under such circumstances it is not necessary to tender notice of abandonment to the underwriters. But should it be possible by any process to recondition the tobacco so that it can be sold as tobacco, then if the cost of reconditioning and the expenses incidental to it, are greater than the sum which would be realized by its sale, this is a case of constructive total loss.

> "Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him." (Section 62 (7).)

The definition of constructive total loss in Section 60 reads—

> "(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expen-

diture which would exceed its value when the expenditure had been incurred.

" (2) In particular, there is a constructive total loss—

" (i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (*a*) it is unlikely that he can recover the ship or goods, as the case may be, or (*b*) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

" (iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival."

Salvage Loss.

Where the ship or goods are sold at any point on the voyage because they are in such a condition that they constitute a constructive total loss under the definition given above, the most probable form that the settlement will take is that the amount realized by the sale, less the expenses of the sale, will be paid to shipowner or shipper, and he will recover from his underwriters the insured value less the net amount thus realized. If goods valued at and insured for £5,000 in the policy, are sold for £450 and the expenses of sale amount to £50, the sum recoverable from underwriters will be £4,600. This is termed a salvage loss.

CHAPTER XIII

SUBROGATION—RIGHTS OF UNDERWRITERS

In every case where underwriters settle claims for total loss, they are entitled to all rights which remain in the goods for which payment has been made. The goods may be washed ashore or they may be taken out of the hold of a wrecked vessel as a result of salvage operations, and in each case, if underwriters have paid the insured value of the packages, they are entitled to receive any sum which may result from their sale. Or if the casualty which has led to the loss of the goods is of such a nature that some person or persons are found liable for the loss, and in consequence damages become payable to the assured, the sum due must be handed over to the underwriters.

It is the custom to require the assured to sign a letter in which he assigns to his underwriters all the rights to which they are entitled under the following provision of the Act—

> "Where the insurer pays for a total loss, either of the whole, or, in the case of goods, of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss." (Section 79 (1).)

The underwriter is endowed with all the rights which the assured possessed, and if in the exercise of those rights the underwriter receives a sum greater than the amount which he has paid to the assured, this would not in any way affect the principle. If a vessel is posted as missing and the assured

receives from his underwriters a sum of £5,000, this being the insured value of the goods which he has on board, although their actual value is £6,000, the fact that the vessel subsequently arrives and the goods are sold by underwriters for £6,000 will not be of the slightest benefit to the assured; the payment of £5,000 by underwriters discharges all their liability to him. Unfortunately for underwriters, they are more likely to find that the sum which they receive by exercise of the rights they acquire in the letter of assignment, will be much less than the amount paid to the assured, but whatever the sum, it is theirs absolutely.

Section 79 (2) of the Act which deals with subrogation in so far as it applies to partial loss states that—

> "Where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss."

Thus, when settling a claim for partial loss, the underwriter cannot claim possession of the property itself, but is subrogated to all rights and remedies as regards recovery of the loss. For example, the loss may be recoverable from the shipowner under the Carriage of Goods by Sea Act, or, if caused by collision, and the colliding vessel is to blame, from the owners of the colliding vessel.

CHAPTER XIV

THE MEMORANDUM

N.B.—Corn, fish, salt, fruit, flour and seed are warranted free from average unless general, or the ship be stranded—Sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent, and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent unless general, or the ship be stranded.

It is the custom for Marine Insurance Companies to make an addition to the Memorandum in all policies which they issue, and the clause in company policies reads—

> " Corn, fish, salt, fruit, flour and seed are warranted free from average unless general, or the ship be stranded, sunk or burnt—Sugar, tobacco, hemp, flax, hides and skins are warranted free from average under five pounds per cent, and all other goods, also the ship and freight are warranted free from average under three pounds per cent unless general, or the ship be stranded, sunk or burnt."

A comparison between this clause and the clause inserted in the form of policy printed in the Act, and which heads the Chapter, will show that the additions made to the Memorandum have increased the protection granted to the assured and in consequence have extended the liability of the underwriter. The first word which requires explanation is the word " *unless.*" The meaning of this word was determined in 1764, and it is now well understood that it means " except." The word " average " in the sense in which it is used here means partial loss by sea damage, etc. In passing, it is well to notice that a shipowner who uses the word " average " will probably mean general average, but a shipper who states that he wishes to insure against average will mean

that he wishes to insure against the risk of partial loss by one of the perils specified in the policy.

Meaning and Effect of Memorandum.

The Memorandum as printed in a company policy therefore means that—

Corn, fish, salt, fruit, flour and seed are warranted free from partial loss except for general average, unless the ship be stranded, sunk or burnt—Sugar, tobacco, hemp, flax, hides and skins are warranted free from partial loss under five pounds per cent, except for general average unless the ship be stranded, sunk or burnt, and all other goods, also the ship and freight are warranted free from partial loss under three per cent except for general average unless the ship be stranded, sunk, or burnt. The effect of the Memorandum is to free underwriters altogether from payment for partial loss on corn, fish, salt, fruit, flour and seed, unless the ship is stranded, sunk, or burnt, and to relieve them of payment unless the damage amounts to five per cent on the other specified articles, or three per cent on other goods and the ship and freight.

A brief examination of the clause enables us to grasp the intention of the underwriters who introduced it in 1749.

If any of the articles specified in the first section are wetted by sea-water in the ordinary course of the voyage, the damage would be greater than if articles in the second section had been exposed to the same degree, and these in turn would be more seriously damaged than, say, cotton goods or manufactured articles.

Therefore, three distinctions are made—

(1) Underwriters are exempt altogether from payment for ordinary sea-water damage.
(2) Underwriters are exempt from damage under five per cent.
(3) Underwriters are exempt from damage under three per cent.

The first thing that attracts attention is the small number of articles which are enumerated and the fact that since 1749 no additions have been made to the list. The explanation lies in the fact that the Memorandum was soon found not to cover all the articles which underwriters wished to include under the first and second sections, and instead of extending the number it was found more convenient by both assured and underwriters to deal with the insurance of many articles on free from particular average terms, which led eventually to the framing of the clause so well known as the F.P.A. Clause (a clause which is examined later).

But to understand the application of the Memorandum it is essential that the interpretation which has been given to the words *stranded, sunk,* or *burnt* should be noted.

Stranding.

A vessel strands when, out of her ordinary course of navigation, she is forced by some accidental and extraordinary cause to take the ground.

There have been many cases tried on this point, and reference to some of the leading cases will serve to illustrate the definition.

Where a ship was forced ashore by powerful winds and remained ashore until she was enabled by the incoming tide to float off, she was held to be stranded. But a vessel was not held to have stranded when she entered a tidal harbour and grounded, for with the return of the tide she would float off, and therefore in such a harbour she was only undergoing an experience which was common to vessels entering under similar conditions. A vessel which was *intentionally* run ashore to prevent her sinking in deep water was held to be a strand.

A vessel to escape a storm was *forced* to enter a tidal harbour at low water and in so doing took the ground—this was held to be a stranding. But in another case, where a vessel, owing to the shallowness of the river up which she was proceeding, took the ground on three occasions, and for about

two full days in all had her voyage suspended, it was held not to be a stranding. "Taking the ground in the manner mentioned appeared in evidence to be no more than was usual with all vessels of the same class in the Cork river." "When a vessel takes the ground," said Lord Tenterden in the case of *Wells v. Hopwood*, "in the ordinary and usual course of navigation and management in a tide river or harbour, upon the ebbing of the tide, or from natural deficiency of water, so that she may float again upon the flow of tide or increase of water, such an event shall not be deemed a stranding within the Memorandum."

To constitute a stranding, the vessel for a time must have her voyage forcibly interrupted. "It is not merely touching the ground that constitutes stranding. If the ship *touches and runs*, that circumstance is not to be regarded, but if she is forced ashore, or driven on a bank and remains for any time on the ground, this is a stranding, without reference to the degree of damage she may thereby sustain." (Lord Ellenborough.)

When a stranding has occurred, and for practical purposes the report of the casualty to the vessel in the shipping papers will be all the evidence that underwriters will require unless they have grave reason to suspect that the vessel has been deliberately and maliciously run ashore, the assured is entitled to recover from his underwriters for any partial loss which arises during the voyage, even if it amounts to ninety per cent. The actual stranding may have caused no damage to the cargo, but in technical language the warranty is said to have been broken and in consequence ceases to have any bearing upon the contract.

In connection with stranding, there is a clause in common use which qualifies the effect of our general definition, so far as certain waterways are concerned. One form of the clause reads—

"Grounding in the Panama Canal, Suez Canal, or in the Manchester Ship Canal or its connections, or in the River

Mersey above Rock Ferry Slip, or in the River Plate (above a line drawn from the North Basin, Buenos Aires, to the mouth of the San Pedro River) or its tributaries, or in the Danube or Demerara Rivers or on the Yenikale Bar, shall not be deemed to be a stranding, but the insurer to pay for any damage or loss proved to have directly resulted therefrom."

This clause limits the liability of underwriters to the actual damage which results from the technical stranding, but does not render them liable for Particular Average damage caused at other stages of the voyage, where policies are issued on F.P.A. terms or the damage is below the percentage specified in policies issued on Particular Average terms. These points are mentioned now, but their implication should be remembered in the full discussion of "Particular Average" and "F.P.A. Clause" in Chapters XV and XVII.

Sinking.

It would appear from the case of *Bryant & May* v. *London Assurance* that the sinking must generally be of such a nature that the vessel is completely covered with water. The fact that a vessel is partially under water will not be regarded unless it can be proved to the satisfaction of the court that owing to the nature of the cargo it is impossible for the vessel to sink deeper. As in the case of stranding the course of the voyage must be absolutely stopped, so in the case of sinking it is essential that the sinking shall be as complete as possible.

The witnesses in the case of *Byrant & May* v. *London Assurance* admitted that the ship, which was laden with timber, would have sunk deeper if the cargo had been more badly wetted, and on this evidence the case was decided in favour of the London Assurance Corporation. But although the point does not come out clearly in this, the only case heard so far on the meaning of this word, it is surely impossible to leave the nature of the cargo out of account, and we shall probably

be safe in assuming *that where a vessel cannot sink deeper, owing to the nature of her cargo, this will constitute a sinking within the meaning of the Memorandum.*

Burnt.

There is a certain diversity of opinion as to the conditions which must prevail to constitute burning, but it is generally understood that the burning must be substantial. Strictly speaking, therefore, a bunker fire or a fire doing little structural damage to the ship is insufficient to break the warranty.

With the object of lessening the possibility of dispute the Memorandum in many policies is amended to read "or the ship be stranded, sunk, burnt, or on fire."

Or in Collision.

These words are sometimes added to the Memorandum after the words " burnt " or " on fire " and they refer to collision with another ship or vessel whether the vessel collided with is engaged in the performance of a voyage, or is in a state of wreck. But collision with stationary objects, such as piers, landing stages, and dock gates, is not included.

The student should bear in mind that the Memorandum is a clause of some antiquity and, although it is still in use and is often applied to insurances on raw materials and the hulls of vessels, it is rarely utilized for manufactured goods, for which a much fuller cover is usually required.

CHAPTER XV

PARTICULAR AVERAGE

THE insurances which are effected on goods can be roughly divided into insurances effected on F.P.A. terms, and by policies to cover the risk of particular average. In commercial language, the latter are referred to as insurances with average, or insurances effected average payable.

Definition of Particular Average Loss.

A particular average loss is defined in Section 64 as a "partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss."

The loss must be a loss which attaches only to the subject-matter insured and not a partial loss which is common to the whole adventure, for under the latter conditions the loss would be a general average loss which would fall upon the whole of the interests at stake, and would carry with it rights and obligations which are peculiar to the question of general average.

In particular average, there is no contribution from other interests to the loss sustained by the ship alone or the cargo alone; the loss falls solely upon the persons whose interest suffers damage.

The proximate cause of the loss must, of course, be one of the perils insured against, and Arnould's definition that a particular average loss is "loss arising from damages accidentally and proximately caused by the perils insured against to some particular interest, as the ship alone or cargo alone" is consistent with the definition in the Act and gives clearer expression to the application of the doctrine of proximate cause. But clearer still is the amplified form of this definition as given by Mr. Gow. "Particular average is the liability attaching to a Marine Insurance policy in respect of damage

or partial loss accidentally and immediately caused by some of the perils insured against, to some particular interest (as the ship alone or the cargo alone) which has arrived at the destination of the venture."

Average Clauses.

In the Memorandum it is stated that sugar, tobacco, hemp, flax, hides, and skins are warranted free from average under five pounds per cent., and all other goods, also the ship and freight are warranted free from average under three pounds per cent, unless general, or the ship be stranded.

The object of this clause is to relieve underwriters from payment of small claims for partial losses, and the intention, if not the practice, in the early history of its use was to deduct the named percentage from the amount of the claim. Therefore if sugar, tobacco, hemp, flax, hides, or skins sustained damage equal to ten per cent, underwriters would pay only five per cent. And in the event of goods or the ship sustaining a similar percentage of damage, underwriters would be liable for only seven per cent. The intention was obviously to make the assured take every precaution to protect the interest at risk by forcing him to bear a portion of any loss which occurred. But Arnould states that the practice in this country has uniformly been that when the loss exceeds the excepted amount of percentage, the underwriter is liable for the full amount of the loss, and not only for the surplus.

Whether this is a correct statement of facts is open to question, but there is no doubt that for the last 180 years this has been the method adopted by underwriters.

During late years the percentages of the Memorandum have not been found to meet the demands of modern commercial conditions. Very brief consideration will show the reason for this.

In the case of goods, the damage might amount to a considerable sum and yet leave the assured without right of recovery from his underwriters.

A shipment valued at £50,000 would require to be damaged to the extent of £1,500 before any liability attached to underwriters. Such conditions as these would be onerous and unsatisfactory to the shipper, and as the policy is essentially a business document, underwriters as business men have introduced or agreed to clauses which are more in accordance with the spirit of the contract.

A common clause in use in policies on goods is, "To pay average on each package separately." If a policy on a shipment of goods consisting of five bales, each valued £300, is so claused, the underwriters will be liable for any damage amounting to 3 per cent or £9 on any one bale.

Average Clauses are inserted in policies for the benefit of the assured and with the intention of extending the liability of underwriters—if their effect is to deprive the assured of some benefit which he would receive under the conditions of the Memorandum, the very purpose of their insertion would be defeated.

If, for example, out of the shipment mentioned above the first bale landed is damaged to the extent of seven per cent, the second two per cent, the third one per cent, the fourth four per cent, and the last two per cent, it will be seen that the damage to the first and fourth bales only is over three per cent, but the damage over the whole five bales is equal to three and one-fifth per cent, or one-fifth per cent in excess of the percentage in the Memorandum.

If the assured recovered from his underwriters only for the damage to the first and fourth bale, he would receive £33, but basing his claim on the damage of three and one-fifth per cent over the whole shipment, he would be entitled to £48. He is therefore in a better position if he relies upon the terms of the Memorandum and ignores the special Average Clause. This he is entitled to do, for the principle underlying these clauses is, that they are inserted for the purpose of giving the assured some benefit which he does not derive from the printed form of the policy. He can avail himself either of the terms of the special Average Clause or of the terms of the Memorandum

at his discretion. To make the position quite plain, the words, "or on the whole" are frequently added to the Average Clause mentioned above.

Many forms of Average Clauses are in use; cocoa is usually insured average payable on each 25 bags, and other goods are insured under variations of the Average Clauses which have been introduced to reduce hardship to the assured. The nature of the Average Clause is considered by underwriters in fixing the rate, and the premium charged would bear some relation to the concessions which are made to the assured.

Where the number of packages is specified in the clause, that number is deemed a full series, and on a shipment of 230 bags of cocoa, we should have nine full series of twenty-five bags each and what is termed a tail series of five bags. In such a case it is customary for underwriters to pay particular average claims where damage occurs to the tail series, so that under certain conditions it is possible for claims to arise on the tail series without any claim arising on a complete series. It is found in practice that in the event of a claim for particular average, the tail series is likely to be the most damaged, owing to the practice which prevails at many ports of discharging the damaged cargo after all the sound cargo is taken out of the hold. It might even be found that no claim at all arises on the full series. To take the shipment of cocoa as an illustration, the whole 225 bags might be discharged from the steamer without damage and the last five bags might be landed with damage amounting to five per cent.

The gathering together of all the damaged goods certainly gives the shipper full protection, but the separation of the damaged cargo from the sound reduces the radius of possible damage, and, in consequence, limits the liability of the underwriters.

It should be noted that underwriters may agree to pay claims on certain interests without any reference to the amount of damage sustained, and in such cases the clause "Average payable irrespective of percentage" is inserted in the policy.

In the case of cargo, the usual cause of loss is damage by sea-water, which deteriorates the quality of the cargo or reduces the quantity, or both.

If the quantity only is reduced, say in the case of sea-water washing out the contents of a cask, it is the custom of underwriters to pay the insured value of that particular cask. But should the contents have deteriorated in quality or have been only partially washed out, the settlement will take the form of a particular average settlement. It is important to notice that the question of percentage does not apply when the vessel strands, sinks, is burnt, is on fire, or in collision, where these events are provided for in the Memorandum, and underwriters are liable for particular average damage to the interest on board even if it amounts to one per cent only. The same conditions which attach to a breaking of the warranty in respect of the named articles of the Memorandum apply to the interpretation of the Average Clauses.

Presentation of Claims.

The following documents should be produced to substantiate a claim—

The insurance policy.
The bill of lading.
Copy of the invoice relating to the goods insured.
The report of a responsible surveyor upon the damaged goods. (*Note:* It is the practice to insert in policies the name and address of the insurers' representative at the port of discharge, in order that surveys may be expeditiously arranged.)
Receipted account for any charge incurred in connection with the loss.
Any other documents referred to in the Survey Report, e.g. account sales, if the goods have been sold in order to assess the measure of damage.
Copies of any correspondence with the shipowner regarding his liability, if any, for the loss.
Copy of the shipmaster's protest, if one has been noted.

Where it is not apparent that the claimant is entitled to benefit under the policy, it will be necessary for him to prove title or to produce authority to collect the claim.

CHAPTER XVI

ADJUSTMENT OF PARTICULAR AVERAGE

THE principles upon which all adjustments of particular average are based rest upon the case of *Lewis* v. *Rucker* in 1761 and the case of *Johnson* v. *Sheddon* in 1802.

Basis of Adjustment.

In the first case the position of the underwriter is clearly defined. "He engages," said Lord Mansfield, "that the thing shall come safe—he has no concern with any profit or loss which may arise to the merchant from the goods." Therefore the loss sustained by the merchant may be and probably will be a totally different sum from that which he is able to recover from his underwriters, and the extent of the difference will depend upon the price which the damaged goods realize on sale. The merchant loses the difference between the market price of the damaged goods and the price which they would have realized had they arrived sound, but the underwriter reimburses the merchant to the extent of the proportion of the loss applied to the value in the policy.

To take a simple illustration—

Goods are insured for £200—the sound market value of the goods is £180, but arriving damaged they realize only £150. This represents a loss of one-sixth and the merchant would recover from his underwriters £33 6s. 8d., this being one-sixth of the insured value (£200).

The case of *Johnson* v. *Sheddon* established the further point that the percentage of the value stated in the policy which the underwriter has to pay, must be ascertained by comparing the gross sound value with the gross damaged value.

Mr. Justice Lawrence pointed out that it was in this way alone that a uniform measure of adjustment can be obtained,

the result of which will be the same whether the markets rise or fall, or whether the charges are increased or diminished. If the goods arrive, it will be immaterial whether they arrive sound or damaged so far as the freight is concerned, and the landing charges and the duty also will not be varied; consequently a comparison between the full market value and the amount realized will, under these conditions, give the exact measure of their depreciation. An example from data used by Arnould well illustrates all the points of this judgment.

Let it be assumed that the gross proceeds of goods valued at £500 in the policy would, if they had come to a *losing* market in a sound state, have been £350, and if to a *gaining* market £850—let it be further assumed that the depreciation in both cases is one-half the sound value.

	In a losing market.	In a gaining market.
The gross proceeds of sound sales ..	£350	£850
,, ,, ,, ,, damaged sales ..	175	425
Difference ..	£175	£425

In each case the amount of damage being fifty per cent of the sound values, the underwriters pay fifty per cent of the value in the policy, i.e. £250.

Contrast this with the result obtained by a comparison of net values.

In losing market.

Gross sound proceeds	£350	
Deduct freight and charges	100	
Net sound value ..		£250
Gross proceeds of damaged sales ..	£175	
Deduct freight and charges	100	
Net damaged value		75
Depreciation		£175

or 70 per cent of the net sound value.

In gaining market.		
Gross sound proceeds	£850	
Deduct freight and charges	100	
Net sound value ..		£750
Gross proceeds of damaged sales ..	£425	
Deduct freight and charges	100	
Net damaged value ..		325
Depreciation		£425

or 56⅔ per cent of the net sound value.

The goods being insured for £500, the underwriters on this basis would pay seventy per cent, or £350 if the goods were sold in a losing market, and fifty-six and two-thirds, £283 6s. 8d., if the goods were sold in a gaining market, yet the amount of damage would in each case be the same, the difference arising, as clearly indicated in the example, through the deduction of freight and charges.

The principle of comparing the gross sound and damaged values has been acted upon since 1802, the year in which the case of *Johnson* v. *Sheddon* was decided, and the Marine Insurance Act in Section 71 clearly summarizes the practice which has prevailed since that date in the settlement of particular average claims.

"Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows —

"(1) Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy:

"(2) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in the case of total loss:

"(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.

"(4) 'Gross value' means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. 'Gross proceeds' means the actual price obtained at a sale where all charges on sale are paid by the sellers."

How Goods should be Insured.

The assured must, therefore, if he wishes to place himself in a favourable position in the event of a particular average loss, take the precaution of insuring up to the gross arrival value of his goods, i.e. the value including duty and all charges.

Duty is a term which probably requires no explanation; it is the sum paid to the Government of a particular country, on goods which pass through its Customs Houses in the course of trade. The method of insuring duty must be a matter of arrangement between underwriters and assured, and it is possible, if the insurance applies to goods shipped to a country where the duty is high, that a special policy will be issued to come into operation on the arrival of the goods at their port of destination. The reason for this is quite simple—duty is not paid until the goods have safely arrived and therefore for the actual voyage it is only necessary to insure the invoice value of the goods plus the charges, freight (if paid in advance) and an allowance for profit.

How Adjustment is Made.

All adjustments of particular average on cargo are dealt with on the lines indicated. First from a certificate issued by Lloyd's agent or some other responsible person at destination, a comparison is made between the sound value and the damaged value or the gross proceeds realized at a sale, and the percentage of loss is applied to the insured value.

To take a simple illustration, suppose a bale of cotton goods which, if it had arrived sound at Bombay would have been worth £50, is damaged by sea-water to the extent of twenty-five per cent. and therefore realizes only £37 10s. 0d., the assured would recover £15 from his underwriters if it is insured for £60, and £10 only if it is insured for £40.

This is the course where the value of each package is stated in the policy.

Suppose, however, that an insurance is effected on fifty bales of cotton goods of which the respective values are not stated in the policy, the value of any damaged bale is arrived at by taking the total invoice value of the fifty bales, and as the invoice value of the fifty bales is insured for so much, the invoice value of the one damaged bale would be insured for so much.

To take an example. Suppose fifty bales are insured for £550, the invoice value of twenty-five bales is £12 each or £300 in all, and the invoice value of twenty-five bales is £8 each or £200. If one of the bales invoiced at £12 is damaged, then

If fifty bales value £500 are insured for £550 0s.
one bale ,, £12 will be insured for £13 4s.

and the percentage of loss will be applied to this value. In every case the percentage of damage must, of course, exceed the three per cent. or other precentage which has been stipulated in the policy. It is not necessary that the damage be caused on one occasion, but it is essential that it be caused by the perils insured against, during the currency of the voyage specified in the policy.

The damage must be *actual* damage, and no charges of any

description can be taken into account in arriving at the percentage of loss. The rule of the Association of Average Adjusters on this point is very clear. "The expenses of protest, survey and other proofs of loss, including the commission or other expenses of a sale by auction are not admitted to make up the percentage of claim, and are only paid by the underwriters in case the loss amounts to a claim without them."

Should damage on goods only amount to two and three-quarters per cent under the form of policy with the usual three per cent clause, neither the cost of survey nor the amount of damage would be recoverable from underwriters.

Goods Incapable of Identification.

It is stipulated in Section 56 (5) of the Act that

> "Where goods reach their destination in specie, but by reason of obliteration of marks or otherwise they are incapable of identification, the loss, if any, is partial and not total."

There is some difficulty in the practical application of this rule where the unidentifiable goods are the property of several shippers. If only one person is interested, then he would be in a position to recover direct from his underwriters for the partial loss to his goods, but the position where several shippers are interested can only be arrived at by calculation.

An actual instance will illustrate the method adopted.

A vessel was wrecked and 231 bales were totally lost, but 1,645 damaged bales arrived safely at their destination with the marks obliterated, so that it was impossible to identify them.

The proportion of unidentifiable bales arriving damaged was therefore $\frac{1645}{1876}$ and the number of bales lost $\frac{231}{1876}$. So that a shipper who had 300 bales unaccounted for would arrive at his position by taking $\frac{1645}{1876} \times 300$ to ascertain the number of damaged bales, say 263 and $\frac{231}{1876} \times 300$ to assertain number of bales lost, say 37.

CHAPTER XVII

F.P.A. CLAUSE

In the chapter on the Memorandum it was mentioned that the F.P.A. Clause was framed to avoid the necessity of increasing the number of articles specially referred to in the Memorandum, and also because underwriters and assured found it mutually convenient in many cases to arrange insurances on such terms that no liability for ordinary sea water damage rested on the policy.

The clause reads :—

"Warranted free from Particular Average unless the vessel or craft be stranded, sunk, or burnt, but notwithstanding this warranty the Assurers are to pay the insured value of any package or packages which may be totally lost in loading, transhipment or discharge, also for any loss of or damage to the interests insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress, also to pay landing, warehousing, forwarding, and special charges if incurred for which Underwriters would be liable under a policy covering Particular Average. This warranty shall operate during the whole period covered by the policy."

Application of the Clause.

The opening words are almost identical with the words in the Memorandum and it is scarcely necessary to say that the interpretation of the words " stranded, sunk, or burnt " is the same for both Memorandum and F.P.A. clause. One rule applies in each case, the goods must actually be on board at the time the stranding takes place, otherwise the assured will be unable to recover from his underwriters for any partial loss caused

by sea-water. If, therefore, a vessel loading at both Glasgow and Liverpool for Buenos Ayres, strands between Glasgow and Liverpool and afterwards completes her loading at Liverpool, underwriters will be liable for any partial loss which arises through sea-water damage to the goods put on board at Glasgow, even though the damage may not occur until the vessel is within sight of Buenos Ayres. In the language of Marine Insurance, the F.P.A. warranty in respect of these goods will have been broken and though the stranding may have been a stranding which caused no serious damage to either vessel or cargo (a technical stranding), the fact of the goods being on board will be sufficient to render underwriters liable for any partial loss caused by a peril mentioned in the standard form of policy during the whole course of the voyage insured. But no liability for sea-water damage would attach to underwriters on F.P.A. policies in respect of the goods put on board at Liverpool, for the stranding had taken place before the loading of the goods.

This stringent application of the clause does at first sight appear to create an anomalous position, for in the illustration, the goods from Glasgow were not damaged as a consequence of the stranding, but by action of sea-water at a time when both the Liverpool and Glasgow goods were probably liable to an equal degree of damage. But it must be remembered that the shippers from Glasgow insured on F.P.A. terms before the vessel had stranded, and if the shipper from Liverpool were admitted to equal rights under F.P.A. policies, it would be tantamount to cancelling altogether the application of the warranty. As the rate of premium for F.P.A. policies is naturally less than the rate to cover particular average on the same class of goods, the assured would be able to avail himself, under these circumstances, of a form of policy which, although issued at a lower rate, gave him all the protection he would enjoy under a policy issued to cover the risk of particular average.

By the terms of the customary clauses which are embodied

in policies issued on cargo, each craft or lighter is deemed to be a separate insurance, and, therefore, if the craft or lighter strands, either whilst proceeding to the vessel or whilst carrying cargo from the vessel to shore, underwriters are liable for any partial loss by sea-water which is suffered by the goods on board. This is a distinct concession to the assured, for it gives him the right of recovery for partial loss on a *portion* of the cargo which he may be shipping. It is agreed also that payment will be made for any damage or loss *caused* by collision with any other ship or craft. This is perfectly clear; the damage must be received at the time the collision occurs, and be the direct outcome of it.

The agreement "*to pay landing, warehousing, forwarding, and special charges if incurred for which underwriters would be liable under a policy covering Particular Average*" is discussed in the next chapter (Particular Charges), and it will be sufficient to say here that no liability would attach to underwriters for expenses incurred to avert or minimise partial loss to goods insured on F.P.A. terms if it were not for the insertion of this portion of the clause; the expense could only be incurred to prevent a total loss.

Underwriters also consent to accept liability for any package or packages which may be totally lost in transhipment.

This covers losses which may arise during the act of transferring cargo from one vessel to another, or from a lighter or craft to the vessel, or from the vessel to a lighter or craft, and the risk is extended by the terms of the current Institute F.P.A. clauses to cover loss during loading and discharging.

The loss must be a total loss and no liability attaches to underwriters under the F.P.A. Clause in respect of package or packages which fall into the water and are afterwards recovered.

The final provision in the F.P.A. Clause, "This warranty shall operate during the whole period covered by the policy" was inserted in order to clarify the position when goods are insured from warehouse to warehouse.

On one occasion an insured took action against the underwriters to recover a partial loss which had occurred during the period of transit on land. The case for the insured was that the policy could be interpreted as covering Particular Average on land, and that the restrictive warranty as to the stranding, sinking or burning of the vessel could only apply to transit by sea. Although he did not succeed against the underwriters, it was deemed advisable to make it clear that the conditions of the F.P.A. Clause apply throughout the whole period of transit.

CHAPTER XVIII

PARTICULAR CHARGES

"WHERE the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage." (Section 78 (1).)

"It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss." (Section 78 (4).)

This principle underlies all the applications of the sue and labour clause; the expenses which underwriters agree to pay by its terms are the expenses which the assured or his servants have incurred in good faith in fulfilment of the obligation which is placed upon them by this particular clause in the Act.

Sue and Labour Clause.

"*And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured.*"

This clause in the policy comes into operation only when a loss or misfortune has actually occurred and therefore does not apply to expenses which are incurred to *prevent* a loss.

The persons whose labour is paid for must be the assured, his servants, factors or assigns, and no charges for assistance rendered or work done by persons who do not come within this category will be held to come under the clause. This excludes all claims which may arise in connection with sums awarded to salvors by the Admiralty Court, but it will include sums paid under a contract fixing a definite rate of payment for the performance of certain services. In the latter case, the persons who render service become the servants of the assured, but in the former, the services are rendered with a view to the reward which may be obtained, and under the ordinary form of policy can be recovered as a loss by one of the perils insured against. This is provided for in Section 65 (1).

> " Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils."

The expenses incurred under the sue and labour clause must be for the benefit of the special interest insured by the policy and not for the common safety of ship, freight and cargo. The charges are *Particular Charges* and, as the name denotes, must be applicable to a particular interest, and have been reasonably incurred by the person who controls the expenditure. Finally, the expense must be incurred to avert or minimise a loss for which the policy is liable.

So far as policies on goods are concerned, the most important point is, that any charges which may be incurred to recondition cargo at a port *en route* to destination, can be recovered in full in all cases where the insured value is equal to or greater than the actual value, provided that the charges are incurred to avert a loss for which underwriters would be liable, and can also be recovered in those cases where underwriters by the terms of the policy specially agree to accept liability for all expenses of this character; but the expenses which have been incurred cannot be added to the amount of loss which goods are found to have sustained on

arrival at destination, for the purpose of arriving at the percentage of damage.

For example, a shipment of cotton goods in bales from Birkenhead to Bombay may be damaged by sea-water through rough weather encountered in the Bay of Biscay. At Naples the bales are unpacked, as far as possible dried and are then repacked and sent on to their destination. If on arrival at Bombay they are found to have sustained damage to the extent of two and a half per cent, the whole of the expenses incurred at Naples must be paid by the underwriters, provided that the insured value is equal to or greater than the actual value, but no liability will rest upon them for the damage discovered at Bombay, because the loss does not amount to three per cent.

It is important to notice that underwriters agree in the F.P.A. Clause to accept liability for "landing, warehousing, forwarding, and special charges if incurred for which underwriters would be liable under a policy covering Particular Average." In other words, they agree to put the assured on the same basis as if they had taken out a policy to cover the risk of particular average so far as the liability for charges of this character are concerned.

The extension of the liability under this clause was designed to meet cases similar to that of the *Great Indian Peninsular Railway Co.* v. *Saunders.* In this case, a shipment of railway iron was insured warranted free from particular average from London to Bombay. The ship was condemned and in consequence extra expenses were incurred by the payment of increased freight for shipment by another vessel. As the goods were not in danger of total loss at the time the expense was incurred, it was held that underwriters were not liable.

This case was decided in 1861, but at the present time a similar shipment would probably be insured under a policy containing the F.P.A. Clause, and the whole of these expenses would be recoverable.

It is scarcely necessary to say that any steps taken by the assured under the liberty given to them by the provisions of

the sue and labour clause, do not prejudice any rights which they possess apart from its existence. This is made perfectly clear in the policy by the insertion of the waiver clause already referred to in its connection with constructive total loss. (See page 79.)

Successive Losses.

The total liability of an underwriter is not limited by the amount of his policy, and under certain circumstances the amount which he would be liable to pay might considerably exceed it.

For example, goods are shipped from London to Yokohama. At Port Said, expenses are incurred, under the sue and labour clause, for reconditioning and for storage of the goods in a warehouse until shipment is made by a later vessel. The goods are totally lost by the foundering of the vessel before arrival at Yokohama. Under these conditions, underwriters would be liable for the expenses incurred under the sue and labour clause, in addition to the insured value of the goods. But should the assured decide, on the arrival of the steamer at Port Said, not to have his goods reconditioned, he could, in the event of the goods being subsequently totally lost, recover only the amount for which he was insured and no allowance would be made in respect of the estimated cost of reconditioning at Port Said.

> "Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.
>
> "Where, under the same policy, a partial loss, which had not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss.
>
> "Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause." (Section 77.)

CHAPTER XIX

THE SHIP

Insurable Value.

REFERENCE to Section 16 (1) will show that, subject to any express provision or valuation in the policy, the insurable value of a vessel is the value at the commencement of the risk. It is customary to insure steamers for twelve months, and therefore, if the vessel is valued at £400,000 and is insured for twelve months from the 1st January, the wear and tear which diminish her value considerably in the space of twelve months is not taken into account. The result is that if the vessel is totally lost in December, at that time she may be worth only say £375,000, but underwriters would be liable for £400,000. Steamers are insured in this manner on the ground of convenience, for it is obvious that it is impossible to gauge with accuracy the amount of wear and tear which is undergone.

Where the value of a steamer is high, an underwriter in many cases does not accept liability for the full value, but will issue a policy for a proportion, and the assured, probably through brokers, will obtain from different marine insurance companies, or underwriters at Lloyd's, a number of policies which insure him up to the required amount. In the case of a steamer valued at £120,000 in the policies, an underwriter who issues a policy for £5,000 is liable only for one twenty-fourth of the sum for which underwriters are liable in the event of particular average loss, and this proportion is paid direct to the assured. But where a policy for the full amount is issued by underwriters who reduce their liability by obtaining reinsurance policies from other underwriters, the assured are not concerned in the slightest degree with the relations which exist between insurer and reinsurer. The underwriters accepting the risk must pay

in full all claims for which the policy is liable, and must recover from the reinsurers all sums due from them.

In 1936 a committee was appointed by the Board of Trade to inquire into the system of insuring the hulls of vessels, and the appointment of this committee was brought about by reason of certain judicial comments following the loss of several vessels.

In each of these cases it was said that the vessel was insured against total loss for far more than her true value.

It will be realized that in the case of an old vessel of low value, the cost of repairs may be quite out of proportion to her actual value and the following extract from the committee's report will throw some light on the position with regard to the valuation and the premiums to be charged on such vessels—

"Underwriters aim at securing a total figure for premium adequate to cover all the risks insured. A reduction of the agreed valuation may thus lead to an increase in the rate demanded by underwriters. Shipowners dislike high rates; indeed one shipowner witness considered this to be the primary matter in determining values. In the process of bargaining for a renewal these considerations clearly tend to keep up values."

The committee's recommendations were as follows—

"(I) The present practice of issuing valued policies on hull or hull and machinery giving cover against the risks of total or constructive total loss, and also against the risks of particular average, general average, collision liability, etc., in which one valuation of hull and machinery is agreed for all purposes should be discontinued, and that the method designed by the market of a separate valuation for total or constructive total loss should be followed in all such policies.

(II) That an endeavour be made to give immediate effect to this recommendation (No. I) by agreement between the shipping and insurance interests concerned; and that following such agreement, in order to secure universal use

of the clause, or failing such agreement being come to, legislation be introduced to render the use of the Dual Valuation clause compulsory in all policies on hull or hull and machinery.

(III) That the limitations introduced by the market of the amount permitted to be insured 'policy proof of interest,' 'full interest admitted,' or with any like phrase (except to the extent to which the assured may be able to show that his loss would in fact exceed the permitted percentage) should be universally applied to all hull or hull and machinery insurances.

(IV) That legislation be introduced to give effect to this recommendation (No. III)."

The Dual Valuation clause is printed below and whilst it has not been in general use it cannot be said that it has been neglected by insurer or insured as a means of arranging hull insurances during the depression period of low values.

INSTITUTE DUAL VALUATION CLAUSE

(*a*) Insured value for total and/or constructive total loss purposes .. ..

(*b*) Insured value for purposes other than total and/or constructive total loss ..

In ascertaining whether the vessel is a constructive total loss (*a*) shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

In case of claim for total or constructive total loss (*a*) shall be taken to be the insured value and payment by the underwriters of their proportions of that amount shall be for all purposes payment of a total loss.

Should the assured by reason of insured perils become entitled to abandon the vessel and to claim a constructive total loss as above but refrain from doing so and the vessel be not repaired or if she be sold unrepaired, liability here-

under shall be determined as if notice of abandonment had been given and a constructive total loss claimed.

Insurances allowed under the 10 per cent Disbursements clause to be calculated on the amounts recoverable for total loss.

This clause is to be used in conjunction with (Institute) Hull clauses.

Incidently, it should be noted that the opinions of the shipowners and the underwriters organizations in connection with the system of insuring hulls are included in the report, together with the committee's comments thereon, and these read as follows—

"The Chamber of Shipping report to the committee that—

'in present conditions shipowners are of opinion that the present law with regard to the insurance of merchant ships is adequate,' and

'it is not desirable that any change of practice should be ordained by authority.'

The Institute of London Underwriters report that in their opinion—

'there is no necessity to alter the present system.'

The committee are unable wholly to accede to this view. They consider that any steps found to be practicable should be adopted to bring the law and practice more into line with the theory that insurance is intended and required to provide an indemnity only against loss."

Stamp Duty.

Where vessels are insured for a voyage, the Stamp Duty is the same as for policies on goods, but where policies are issued for six months or under, or for twelve months or under, the Duty is in accordance with scale which appears on page 14.

Continuation Clause.

Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided

previous notice be given to the underwriters, be held covered at a pro rata monthly premium, to her port of destination.

This clause, which is inserted in the usual printed clauses attached to policies issued for a period of time, is a special agreement which carries the protection of the policy when issued for twelve months, for a period in excess of that time. In two cases decided in 1900 and 1901 it was held that such policies were void as it was illegal to issue a policy for a longer term than twelve months. It is clear from the conditions of the clause that it was essential that some means should be devised by which the assured could receive full protection until such time as the vessel arrived safely at her destination. This was done by the Finance Act, 1901, Section 11—

"(1) Notwithstanding anything contained in the Stamp Act, 1891, a policy of sea insurance made for time may contain a continuation clause as defined in this section, and such a policy shall not be invalid on the ground only that, by reason of the continuation clause, it may become available for a period exceeding twelve months.

"(2) There shall be charged on a policy of sea insurance containing such a continuation clause a Stamp Duty of sixpence in addition to the Stamp Duty which is otherwise chargeable on the policy.

"(3) If the risk covered by the continuation clause attaches, and a new policy is not issued covering the risk, the continuation clause shall be deemed to be a new and separate contract of sea insurance expressed in the policy in which it is contained, but not covered by the stamp thereon, and the policy shall be stamped in respect of that contract accordingly, but may be so stamped without penalty at any time not exceeding thirty days after the risk has so attached.

"(4) For the purpose of this section the expression 'continuation clause' means an agreement to the following or the like effect, namely, that in the event of the ship being at sea or the voyage otherwise not completed on the

expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days."

The Stamp Duty on a policy for £1,500 issued for twelve months and containing the continuation clause is nine shillings and sixpence, or sixpence over and above the ordinary duty of nine shillings.

For steamers trading on the Great Lakes of America or on any other inland waters the Stamp Duty is sixpence only, this not being a sea risk within the meaning of the Stamp Act. But the insertion of the continuation clause in such policies will carry with it the payment of the extra sixpence provided for in the Finance Act.

Building Risks.

Policies are constantly being issued to cover vessels which are in course of construction or which are undergoing repairs, and Section 8 of the Revenue Act, 1900, states so clearly the amount of Stamp Duty to which such policies are liable, that comment is unnecessary.

"A policy of insurance made or purporting to be made upon or to cover any ship or vessel, or the machinery or fittings, belonging to the ship or vessel, whilst under construction or repair, or on trial, shall be sufficiently stamped for the purposes of the Stamp Act, 1891, and the Acts amending that Act, if stamped as a policy of sea insurance made for a voyage, and though made for a time exceeeding twelve months, shall not be deemed to be a policy of sea insurance made for time."

Actual Total Loss.

Where the assured is deprived of his vessel and there is no prospect of her ever coming again into his possession as a sea-going vessel, he is entitled to recover from his underwriters the full amount of the policy. We referred, in the general discussion of actual total loss, to the case of a vessel

which is carried inland and is left in such a position that she can only be removed by breaking her up, and applying to this case the test of physical impossibility it is clear that underwriters are liable for payment of the full sum insured. But the assured could also be deprived of his vessel by the action of enemies or pirates, and, provided these risks are insured against, underwriters will be liable for a total loss.

Constructive Total Loss.

The general principles governing constructive total loss and abandonment are dealt with in an earlier chapter, but there are special features which are peculiar to insurances on ships, which require consideration. It has been pointed out that unless there is in the policy a special stipulation to the contrary, the insured value is not taken into account in ascertaining whether the loss amounts to a constructive total loss. But in policies on ships and steamers it has long been the custom to insert a clause known as the valuation clause, which stipulates that the insured value is to be taken as the repaired value in ascertaining whether the vessel is a constructive total loss. Therefore where the estimate for repairs is equal to or greater than the value stated in the policy, underwriters will be liable for the full sum insured. The case of *Macbeth* v. *The Maritime Insurance Co.*, in which judgment was given in the House of Lords in March, 1908, established the fact, that in ascertaining whether a vessel is a constructive total loss, the value of the wreck is to be taken into account. In this case the steamer *Araucania* was insured under a policy containing the valuation clause for £12,000. The estimated cost of repairs was £11,000 and if the value of the wreck was added to this amount, a sum greater than the insured value was the result. If the owners were uninsured, there could be no question that they would prefer to sell the wreck for, say, £3,000, sooner than expend £11,000 in repairing a vessel which after repair would be worth only £12,000. This is the view taken by the House of Lords in this case. The test must be, " What would a

prudent uninsured owner do ? " and the answer to this question determines the liability or otherwise of underwriters. " What is insured is the life of the ship as a living instrument of commerce and the owner is not credited with any romantic attachment to the ship, so that he will keep life in her at all costs and to the sacrifice of the commerce of which she is an instrument." (Lord Robertson.)

This view coincides with the test we have applied to constructive total loss of goods, as existing when it becomes a commercial impossibility to complete the adventure. Under the circumstances outlined in the case of the *Araucania*, it was commercially impossible for the owners to attempt to repair their vessel and it is difficult to understand the reasons which led the courts in earlier cases, to depart from so clear and common-sense a principle. But it must be noted that the valuation clause has been revised by the Institute of London Underwriters, and the clauses known as the Institute Time Clauses (which are the clauses in common use in English policies) contain the following form : " *In ascertaining whether the vessel is a constructive total loss the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.*"

For practical purposes therefore, the case of *Macbeth & Co., Ltd.*, v. *The Maritime Insurance Co., Ltd.*, is only useful as indicating the theory upon which the question of constructive total loss rests, as the revised valuation clause deliberately leaves the value of the wreck out of the calculation. The clause would appear to have been framed to meet the difficulties which would probably arise in estimating the value of a wreck, for vessels when unfortunate enough to run ashore are seldom fortunate enough to do so at a point sufficiently near to a port offering facilities for sale to shipbreakers. In the case of the *Araucania*, she ran ashore near Ardrossan on October 25th, 1905, floated off about a week later and was towed into Greenock, so that the break-up value in her case was much higher than it is likely to be in the majority

of cases, owing to her proximity to a district where the demand for old material existed.

Particular Average.

According to the terms of the policy, no liability rests upon underwriters unless the damage to ship caused by a peril insured against amounts to three pounds per cent. But such conditions applied to the value of a large steamer at the present day would be unsatisfactory to shipowners, who naturally wish to be protected to the fullest possible extent, and to underwriters, whose business it is to meet the requirements of their clients. For example, a steamer valued at £150,000 (a moderate sum in comparison with the values of the largest liners) would require to be damaged to the extent of £4,500 before any claim could be made upon underwriters. But to render the terms of the policy more equitable, some such clause as "Average payable if amounting to £500" or "Average payable if amounting to one per cent" will be inserted, and these clauses, in accordance with the rules for the interpretation of the policy, override the conditions of the Memorandum.

In many cases the total value of a steamer is divided into two, three, or more subdivisions, such as

Hull and materials	Valued at
Machinery and boilers	,,
Electric light apparatus, etc.	,,
Cabin fittings and furniture, etc.	,,

The conditions of the average clause will be applied to each separate valuation, and damage equal to or exceeding the percentage or amount stipulated will render the underwriters liable.

Underwriters are liable for the reasonable cost of repairs, less the customary deductions. By customary deductions is meant the allowance which is made for the replacement of old material by new, but the Institute Voyage and Time clauses, and the clauses which have been based upon them now provide that no deduction shall be made, "new for old."

The only obligation laid upon the assured, therefore, is that the repairs shall have been effected at a reasonable cost.

"(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage.

"(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage." (Section 69.)

Janson Clause.

As in the case of goods, so in the case of the ship, the damage is paid without deduction of three per cent. It must be noted, however, that a clause which is known as the Janson clause, is finding increasing favour with assured and underwriters, and by its provisions an attempt is made to revert to the idea upon which the Memorandum is based, i.e. that a proportion of the loss should fall upon the assured. This clause stipulates that only the *excess* of three or five per cent shall be paid by underwriters. In the case of a valuation of £4,000, if the damage amounted to £140, underwriters will pay only £20 where the three per cent Janson clause is inserted, and will not be liable at all if the five per cent Janson clause is inserted, for in the latter case the damage must amount to more than £200 to render underwriters liable.

Unrepaired Damage.

"Where under the same policy a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss." (Section 77 (2).)

But if a vessel is damaged and the damage is not repaired before the policy covering the vessel for the voyage or period of time during which the damage occurs, expires, the total loss during the currency of a subsequent policy will entitle the assured to recover from one set of underwriters in respect of the total loss, and from the other set of underwriters in respect of the amount due for the unrepaired damage. This is a departure from the doctrine of indemnity but is the only practical solution of the difficulties which arise in cases where two totally different sets of underwriters are involved.

In the House of Lords judgment on 30th July, 1920, in the case of *British & Foreign Insurance Company* v. *Wilson S.S. Co.*, it is established that where the vessel is lost during the period covered by a policy by a peril not covered by that particular policy, there is no liability upon underwriters for unrepaired damage. In this case the unrepaired damage was due to a marine peril, and the vessel was subsequently lost by enemy action.

Institute Time and Voyage Clauses.

It is outside the scope of this book to deal in detail with the clauses used in policies on hulls, but the present Institute Clauses will be found in Chapter XXVI.

CHAPTER XX

THE COLLISION CLAUSE

AND *it is further agreed that if the ship, hereby insured, shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this company will pay the assured such proportion of three-fourths of such sums or sum so paid as its subscription hereto bears to the value of the ship hereby insured, and in cases in which the liability of the ship has been contested, or proceedings have been taken to limit liability, with the consent in writing of this company, the company will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur, or be compelled to pay; but when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.*

Provided always that this clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

The Risk Undertaken.

It is only necessary to read this clause to see clearly that its provisions go far beyond the question of paying for damage which is sustained by the ship insured—liability is accepted

for payments which the owners of a vessel may be compelled to pay for damage which is inflicted by one vessel upon another. The contract entered into is, therefore, a contract which exceeds the limits of an ordinary policy against marine risks, and in effect is an independent contract over and above the usual contract of insurance. If we read the clause, we find that underwriters agree to pay their proportion of three-fourths of the damage, based on the insured value of the vessel. This would leave the shipowner with a liability of one-fourth. But the clause is now sometimes amended and an agreement entered into, under which underwriters agree to pay their proportion of four-fourths of the damage. When this is done, the clause is referred to as the 4/4 R.D.C. (Running down clause or collision clause) instead of the 3/4 R.D.C.

If underwriters are not asked to accept liability for the additional one-fourth, the most probable explanation will be that the shipowner is a member of one of the Mutual Insurance Clubs which are established to take over the liability of the shipowner for this one-fourth, in addition to recouping him for small claims which he is debarred from recovering from his underwriters, or that the shipowners have an insurance fund of their own, established for this purpose.

Meaning of Collision.

The collision must be collision with another ship or vessel, and, for the purposes of the collision clause, a tug towing a vessel, or a launch towed by the vessel is deemed to be part of the vessel, and collision with either tug or launch is considered to be a collision with the vessel herself. If the vessel insured is driven by storm into collision with two or more vessels, underwriters will be liable for their proportion of the total damage inflicted.

In the event of collision, the shipowner can take steps to avail himself of the provisions of the Merchant Shipping Act, which limit the liability of the owner of the vessel found to blame to £8 per ton of the vessel's tonnage, if there is damage to property only, and £15 per ton if lives are lost or personal

injury inflicted, £7 of which is allocated to life claims and the remaining £8 for division *pro rata* between the balance (if any) of the life claims and the claims on property. The clause contains an agreement to pay a proportion of three-fourths (or four-fourths) of the expenses incurred in taking these steps or in contesting liability for the collision, provided that consent in writing is obtained. But no responsibility is accepted by the underwriters for loss of life or personal injury ; the clause covers only sums which the assured are liable to pay for damage inflicted upon a ship or vessel.

Both Vessels to Blame.

Where both vessels are found equally to blame, settlement is made on the principle of cross-liabilities. A vessel may inflict damage to the extent of £2,000 and receive damage to the extent of £800, and her underwriters would pay £1,000, this being one-half the damage inflicted ; whilst the underwriters on the other vessel would pay £400, this also being one-half. This mode of settlement differs from the lines laid down by the courts in collision cases ; but as the collision clause in the policy embodies the principle of cross-liabilities, this principle governs the relations of underwriter and assured.

The foregoing example is based on the assumption that the Four-fourths Running-down Clause appears in the policy. The payments would be reduced by one-quarter if the Three-fourths Running-down Clause applied. It should be noted that the remaining liability for damage amounting to £1,400 will be discharged by the underwriters as a direct loss upon their policies, apart from their liability under the Running-down Clause.

With the object of bringing into law the principle that where both vessels are to blame, the liability must be apportioned according to the degree of fault attaching to each vessel, a Bill was introduced into the House of Lords in May, 1911. This passed into law as part of the Maritime Conventions Act, 1911, the first section of which reads—

" Where by the fault of two or more vessels, damage or loss

is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

"Provided that

"(*a*) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

"(*b*) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and

"(*c*) nothing in this section shall affect the liability of any person under a contract of carriage or any other contract, or shall be construed as imposing any liability upon any person from which he is exempted by any such contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law."

In practice, it has been found that this Act has made for greater justice between the parties in collision cases.

Sister Ship Clause.

It is impossible for a shipowner to bring an action against himself in the event of two of his vessels colliding, and it has therefore become necessary to add a clause known as the "Sister Ship" clause, which provides that such cases "shall be referred to a sole arbitrator to be agreed upon between the underwriters and the assured." In this manner the assured obtains all the rights under the policy which he would be entitled to if the collision had been between one of his vessels and one under another ownership.

The "Sister Ship" Clause, which is incorporated as Clause 2 of the Institute Time Clauses, is printed on page 159.

CHAPTER XXI

WAGER POLICIES—DISBURSEMENTS, ETC.

SECTION 4 of the Marine Insurance Act, 1906, states that—

"(1) Every contract of Marine Insurance by way of gaming or wagering is void.

"(2) A contract of Marine Insurance is deemed to be a gaming or wagering contract:—

"(*a*) Where the assured has not an insurable interest as defined by this Act and the contract is entered into with no expectation of acquiring such an interest, or

"(*b*) Where the policy is made 'interest or no interest' or 'without further proof of interest than the policy itself' or 'without benefit of salvage to the insurer' or subject to any other like term. Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer."

The regulations here laid down are only a restatement of principles which had long been acted upon in our courts. The policies issued to persons who were known to have no insurable interest were known to be illegal, but no penalty attached to either the insurer or assured in respect of such policies. Several cases which formed the subject of Board of Trade inquiries prior to 1909 pointed to the necessity for such legislation as would make it impossible for anyone to speculate on the safe arrival of any vessels. These cases elicited the fact that policies were systematically taken out by people who apparently hoped that the vessel would become a total loss. The basis of insurance is to give the assured compensation where his property suffers *accidental* loss or

damage and it was never contemplated that policies would be issued under such conditions that the holder of a policy would receive payment, when he had not even the remotest connection with the property lost.

With this object the Marine Insurance (Gambling Policies) Act, 1909 (see Appendix B), was passed.

Disbursements.

It is obvious that a shipowner would find it impossible to estimate accurately all the sums which he may be called upon to disburse in connection with his vessel during a period of twelve months or even during the course of a prolonged voyage. In equity, therefore, some arrangement became necessary by which he could be spared the necessity of proving the exact sum for which he would be liable in the form of disbursements, and yet at the same time guaranteeing that underwriters would not be incurring a greater liability than the principles of indemnity placed upon them.

The problem was solved by issuing in many cases policies for twelve months on disbursements P.P.I. (i.e. policy proof of interest), the sum insured being, of course, payable only in the event of total loss.

Naturally, the premium for these risks is less than the premium for insuring the vessel herself—in the latter case underwriters are liable for repairs which became necessary in consequence of damage caused by a peril insured against, whilst in the former case they are liable only, as we have already noticed, in the event of the vessel being totally lost.

Over-insurance.

The dangers attaching to the issue of a form of policy without proof of interest being produced by the assured, became evident in the cases mentioned in connection with wager policies, but in other cases where there was no fraudulent intention, the assured took out policies which not only protected them up to the full value of the vessel, but also involved

the payment of further sums which were quite outside the scope of a contract of indemnity.

It is, however, now incumbent upon any person who has effected policies which result in the over-insurance of a vessel, to disclose at the time he is offering the risk on the vessel to an underwriter, that policies are in force which have this result. This point has been decided in the case of the sailing ship *Gunford* (June, 1911), where underwriters successfully pleaded that the policy on the ship was void, as no disclosure had been made of the existence of two P.P.I. (policy proof of interest) policies for sums of £4,600 and £6,500 respectively.

The amount of insurance which a shipowner is allowed to effect on disbursements is now limited by the Institute Time Clauses to a definite percentage of the amount for which he insures his vessel.

CHAPTER XXII

FREIGHT

THE insurable value of freight is the gross amount of the freight at the risk of the assured, plus the charges of insurance. (Section 16 (2).)

Interpretation of Freight.

In the interpretation of the word " freight " there has been marked development, for originally meaning the cargo which was carried, the term now means the payment which has been made or is to be made for the carriage of cargo. We have already seen that it is the custom for shippers of cotton goods and textiles generally to pay or undertake to pay the sum due for carriage irrespective of the safe arrival at destination. This is a complete breaking away from the principles of English law concerning freight, for by law payment is only to be made for the carriage of such cargo as reaches its destination, and where only half the cargo is delivered at destination, only half the freight, according to law, is payable. In English law also, if a vessel abandons her voyage when only a portion of the voyage has been performed, no claim can be made upon the shippers for payment of any sum for a partial performance of the contract. Under the law prevailing upon the Continent, a shipowner is entitled to a portion of his freight if he accomplishes a portion of the voyage. So that, should the voyage be broken up when one-third only has been performed, he becomes entitled to one-third of the freight. Widely differing opinions prevail regarding the result of this liberty of foreign shipowners, but the point is not now of importance, as Continental shipowners have agreed to adopt the general principle that freight shall be payable on completion of the adventure, and *distance freight under special circumstances only*. Where the shipowner is certain to obtain his freight whether

he succeeds in delivering the cargo at destination or not, he has no insurable interest, but he has an insurable interest in all cases where the whole or a portion of the payment is dependent upon the delivery of the cargo.

Particular Average on Freight.

If the shipper has paid freight, the sum paid becomes part of the insured value of the goods or cargo, and for practical purposes ceases to exist as a distinct interest. We have noticed in our examination of the adjustment of particular average on cargo, that the percentage of damage is applied to the insured value of the damaged cargo, and as this value includes any sums paid for the carriage of the goods, there is no necessity to make an independent adjustment of the loss of freight.

But where a shipowner who has insured freight payable at destination is unable to deliver any portion of the cargo at destination, owing to loss by a peril insured against, he will be able to recover from his underwriters such proportion of the sum insured as the portion of cargo lost bears to the whole cargo. If one-fifth of the cargo cannot be delivered, one-fifth of the amount insured on freight is payable by underwriters.

Absolute Total Loss.

There is a total loss of freight (this applies now to the shipowner's interest in freight) when, by the action of perils insured against, the ship is unable to earn the freight. The total loss of vessel and cargo naturally carries with it the right to recover a total loss on freight, for it is obvious that if both ship and cargo are lost, no claim can be made upon shippers for payment in respect of a contract which has not been performed. Or the cargo may have sustained such damage by a peril insured against that it is impossible to carry any portion of it on to destination; this would entitle the assured to recover the full sum insured under the policy or policies on freight.

And where the ship herself, by the action of a peril insured against, is rendered incapable of performing her voyage, and in

consequence is prevented from earning freight, the assured will have a clear claim upon his underwriters for total loss, provided that it is impossible to obtain another vessel to carry the cargo to its destination.

Cargo which is not delivered at its destination but is sold at an intermediate port on account of the impossibility of delivering the cargo in specie at its destination, will involve a total loss of freight if the damage is caused by a peril insured against. Fruit which is damaged by a peril of the sea and, in consequence, has to be thrown overboard, is a simple example of the kind of loss which is indicated. But it must be noted that any loss which arises from causes not covered by the policy, will not entitle the assured to recover from his underwriters.

Constructive Total Loss.

A shipowner whose vessel is unable to complete the voyage insured, is at liberty to procure another vessel to carry the goods on to their destination, and is entitled to payment of freight on delivery. But where the cost of procuring such a vessel entails an expense greater than the value of the cargo, this is a case of constructive total loss of both freight and cargo.

It may happen that, by the payment of a sum of money in excess of the original freight, the cargo can be carried on to its destination, and if it is clearly to the interest of the merchant that this should be done, the master must forward the cargo, and the underwriters on freight will be charged with the difference between the original freight and the total expense incurred up to the sum insured. The master acts as agent for both shipowner and merchant, and his duties have been nowhere more clearly defined than in the extract from Kent's Commentaries quoted by Arnould: "If there be another vessel in the same or in a contiguous port which can be had, the duty is clear and imperative upon the master to hire it; *but still the master is to exercise a sound discretion adapted to the case.* He may tranship the cargo, if he has the means, or let it

remain. He may bind it for repairs to the ship. He may sell part or hypothecate the whole. If he hires another vessel for the completion of the voyage, he may charge the cargo with the increased freight, arising from the hire of the new ship; the master may also refuse to hire another vessel, and insist on repairing his own; and whether the freighter be bound to wait for the time to repair, or becomes entitled to his goods without any charge of freight, will depend upon circumstances. What would be a reasonable time for the merchant to wait for the repairs cannot be defined, and must be governed by the facts applicable to the place and time, and to the nature and condition of the cargo. A cargo of a perishable nature may be so deteriorated as not to endure the delay for repairs, or to be too unfit and worthless to be carried on." " The master is not bound to go to a distance to procure another vessel, or encounter serious impediments in the way of putting a cargo on board another vessel. His duty is only imperative when another vessel can be had in the same or in a contiguous port, or at one within a reasonable distance, and there be no great difficulties in the way of a safe reshipment of the cargo."

These words were written previous to 1844, and though they cannot be taken as defining literally the duty of a master at the present time (it might easily be the duty of a master now to send some distance to procure a vessel) they clearly express the spirit which should prompt his actions.

CHAPTER XXIII

GENERAL AVERAGE

THE principles of general average rest upon practices which have prevailed from time immemorial in connection with the carriage of goods by sea. It is obviously only just and right that a shipper, whose goods are sacrificed when ship and cargo are exposed to a common danger, in order that the danger may be averted, should be recompensed to some degree for the loss he has sustained. In the same way a shipowner whose property is sacrificed under similar conditions, is entitled to some contribution from the owners of cargo towards the loss he has incurred. These rights have no direct connection with any contract which may have been entered into between underwriters and assured. They existed, in fact, long before any scheme of insurance was in force, except in the crudest possible form. In fact, the rules of general average had been arrived at by agreement amongst the merchants and shipowners (who were frequently in those days the masters of their own vessels) of the Mediterranean at least 2,600 years ago. And it has been pointed out by the late Mr. Richard Lowndes that the final form which those laws took "was a system scarcely, if at all, inferior to any of modern times." The application of general average to the contract as expressed in the policy will be dealt with later; the liability of the shipper and shipowner to contribute, and the right to receive contributions when any sacrifice coming within the definition of a general average act has been made, exists now, as it existed so long ago, as one of the conditions of the contract of carriage.

Definition of General Average.

"(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes

a general average expenditure as well as a general average sacrifice."

"(2) There is a general average act when any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in the time of peril for the purpose of preserving the property imperilled in the common adventure." (Section 66.)

This is the definition in the Act and the distinction between general average and particular average is clearly indicated. A voluntary sacrifice is necessarily a sacrifice made by a person who is a free agent and is allowed to exercise some judgment in arriving at his decision to make the sacrifice. But we have noticed in discussing particular average that a particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against. The distinction lies therefore between a loss caused by the elements or one of the perils to which ship or goods are subject, and a loss caused by the deliberate act of man.

Sacrifice should be Extraordinary.

The first condition laid down in the definition is that there should be an extraordinary sacrifice (or expenditure). This condition is true to the spirit of general average, for if any steps are taken by the master which are only taken as part of the fulfilment of the duties laid upon him by the undertaking which his owners have entered into to carry cargo between two ports, these steps are necessarily part of the ordinary performance of his duty to the shipper. The condition indicates a state of affairs when it becomes imperative that something beyond the ordinary duty of master to shipper should be done for the safety of the whole adventure; in a word there must be a sacrifice.

It is impossible to find a better example of an extraordinary sacrifice than the case of the master of a French ship who, to escape capture by an enemy, set his long boat adrift with a lighted lantern fixed to a rapidly fitted mast. The lights of

the ship were then extinguished and the enemy, misled by the light on the long boat, followed her and so allowed the ship to escape. The long boat was lost, and as it had been sacrificed with the intention of saving both ship and cargo, it was held to be a general average loss. In this case the long boat was used for other than her ordinary work, and, in the same manner, where sails have been used for stopping leaks, or engines have been damaged whilst working with the object of getting off a vessel which had stranded, the resultant loss or damage has been deemed to be the result of a general average act.

Voluntary Sacrifice Necessary.

The second condition stipulates that the sacrifice should be made voluntarily ; it must be the sacrifice of some portion of the ship's materials or her cargo, deliberately made in time of peril for the purpose of preserving ship and cargo. And there is a further condition, that the sacrifice should be reasonably made. The master of the vessel is naturally the person on whom this responsibility is placed. It would be unjust to him to pass judgment upon his actions in the light of after-events, and he must be judged on the conditions which prevailed at the time he made the sacrifice and not on the result of his actions. We have already noticed that whatever steps are taken must be taken " for the purpose of preserving the property imperilled in the common adventure." There must be no thought of preserving the ship alone or the cargo alone ; the safety of both must be the object which the master is attempting to attain. The definition generally is a clear statement of the conditions which have been long recognized in English law, viz., to regard only sacrifices made or expenditure incurred for the attainment of safety ; whereas on the Continent the principle is recognized of admitting as general average any sacrifice made or expense incurred in order that the adventure may be completed, or which results in benefit to both ship and cargo. This difference of custom leads to complications which are discussed later.

Jettison.

Loss by jettison or the deliberate throwing overboard of part of a ship's materials or her cargo, in order to save the vessel, is the simplest and most ancient form of the General Average loss. If deck cargo is sacrificed, however, special considerations arise.

Jettison of Deck Cargo.

Loss by jettison of deck cargo is a General Average loss only when there is a custom of trade to carry such cargo on deck. It is not a General Average loss in the following circumstances—

(*a*) If the cargo has been carried on deck without the knowledge and consent of the shipper and against the recognized custom of the trade, in which case the shipowner must accept all liability for any loss.

(*b*) If the cargo is carried on deck by agreement between the shipowner and shipper. The liability of the shipowner to contribute in the event of sacrifice will then depend upon the terms of the Bill of Lading, but no claim for contribution can be made upon other shippers whose goods are carried below deck, whether they are aware of the carriage of a portion of the cargo on deck or not.

(*c*) If it becomes necessary to jettison cargo which, by its inherent vice, has become heated and is therefore a source of danger to the adventure. In such case no claim can be made upon underwriters for the loss sustained, as has been pointed out when discussing jettison in the examination of perils insured against.

Jettison of Ship's Materials.

Where the master sacrifices some of the vessel's stores or tackle, owners of cargo must contribute, provided that the sacrifice has been made for the common safety. It has been held, however, that there can be no claim for contribution

from shippers, when part of the ship's tackle, which is already in a state of wreck, is cut away and thrown overboard. But where any portion of the ship's materials is used for a totally different purpose than that for which it was made, and is used in this manner for the purpose of saving both ship and cargo, there exists a right to claim contribution from all interested in the common adventure. This principle was established in the case of *Birkley* v. *Presgrave*, 1801, a case which is famous for the definition of general average by Mr. Justice Lawrence: "All loss which arises in consequence of extraordinary sacrifices made, or expenses incurred, for the preservation of the ship and cargo comes within general average and must be borne proportionately by all who are interested"; and the words of Lord Kenyon in giving judgment: "All ordinary loss and damage sustained by the ship happening immediately from the stress or perils of the sea must be borne by the shipowners; but all those articles which were made use of by the master and crew upon the particular emergency, and out of the ordinary course, for the benefit of the whole concern, must be paid proportionately as general average."

Expenditure.

The definition admits as a general average loss any extraordinary expenditure incurred under the conditions already discussed in connection with sacrifices. Where expenses are incurred, the shippers will cease to be liable for any further expenses which are incurred from the moment the safety of cargo is ensured. Their liability will be restricted to a contribution to the expenditure incurred during the time ship and cargo were exposed to a common danger. If it happens, therefore, that for the safety of ship and cargo it is thought advisable to put into lighters some portion of the cargo, the expense of doing so will fall upon both shipowner and shipper.

The most complicated questions in connection with expenses arise in connection with port of refuge expenses, i.e. expenses

connected with the entrance, stay at, and departure from, a port which a vessel has had to enter in consequence of damage. If a vessel breaks her shaft, the cost of replacing the shaft will fall under the head of a particular average loss. But the breakage of the shaft may render it necessary for the captain, in the interests of the ship and cargo, to make for the nearest suitable port to effect repairs. In English law, only the expense incurred to place ship and cargo in safety will be recognized as a general average loss. And as safety of the cargo is attained when the cargo is safely warehoused, the further expenses necessary to bring the cargo from the warehouse to the vessel and then reload it upon the repaired vessel will not be allowed in general average.

But if the repairs are necessary because of some sacrifice or damage which is the result of a general average act, the expenses of entering the port, the storage of the cargo, the cost of the repairs and the expenses incurred on leaving the port are all allowed in general average.

It is here that English law at present stands in an isolated position, as both sets of expenses would be allowed on the Continent, whilst the York-Antwerp Rules (1924), which govern practically all carriage by sea, recognize all port of refuge expenses as general average. If, under English law, a vessel returns to a port to effect repairs which are only necessary in order that she may prosecute her voyage, the cost of unloading the cargo is not an expense which must be considered as general average, for the whole adventure under these circumstances is never really in peril. There is no analogy between these circumstances and the circumstances which *compel* a vessel to put into the nearest port (port of refuge) for repairs.

Amounts to be Made Good.

(1) SHIPS. Where damage is sustained by a vessel as a result of a general average act, or where part of the ship's material is deliberately sacrificed, the amount to be made good is the reasonable cost of the repairs necessary to make

her as serviceable as she was immediately before the general average act.

Naturally, the replacement of old material by new, results in an improvement in the value of the vessel, and the average adjusters, who are entrusted with the work of preparing the average statement, will deduct from the actual cost of the repairs certain proportions which vary with the age of the vessel. (In passing we must note that adjustments of general average are usually made up by a professional average adjuster selected by the shipowner, and the necessity for employing a professional adjuster is obvious when we consider the mass of information which has to be collected and arranged, especially where the cargo is of a varied nature and is the property of many shippers.)

If it is necessary to effect repairs at a port of refuge, the expense of executing those repairs, less the deductions mentioned above, will be the amount allowed. This sum may be greatly in excess of the sum for which similar repairs could be effected in a home port, but this point is not to be considered. Should the repairs not be effected until the vessel arrives at her destination, the same rule applies; the actual cost less the usual deductions is allowed.

(2) Goods. Where, after goods have been sacrificed, the vessel with the remainder of her cargo arrives at her destination, the amount to be made good is the net market value of the goods sacrificed. To arrive at the net value, the expenses which would have fallen upon the shipper in connection with the arrival and sale of the goods had they arrived safely must be deducted from the gross sum which the goods would have realized. If therefore the goods would have sold for £500 and the necessary expenses in connection with the arrival and sale would have amounted to £50—the amount to be made good in general average will be £450 only. But, if the goods, before the sacrifice had taken place, were damaged, the amount to be made good is their value as damaged goods at destination, less the expenses which would have been incurred. In the same manner, where the vessel after the

sacrifice and before arrival at destination, encounters heavy weather, in consequence of which the cargo remaining on board sustains damage, this factor must also be taken into account when assessing the amount to be made good, providing that it is reasonably certain that the sacrificed cargo would have been similarly damaged had it been saved and other cargo sacrificed in its place. And the same principle holds good where, as a result of a casualty subsequent to the sacrifice, expenses are incurred which would also have fallen upon the cargo sacrificed.

(3) FREIGHT. Where the shipper has paid freight on goods which are sacrificed, the sum paid is not deducted to arrive at the net market value of the goods, and the only deductions from the amount which the goods would have realized had they arrived safely are the expenses which would have still fallen upon the shipper. But where the shipowner has not been paid, the amount he is entitled to receive will be the gross freight, less a deduction in respect of the charges which would have fallen upon him during the remainder of the voyage, and which, in consequence of the sacrifice, have not been incurred.

If it should happen that although the vessel is unable to complete her voyage, another vessel can be procured to carry on the goods to their destination, the freight to be made good on goods sacrificed will be the original freight less the freight which would have been payable had the goods been forwarded to destination.

Contributing Interests and Values.

The sacrifices which are made must be made good by the contribution of all interested in the adventure, and the same principle applies where expenditure is incurred to attain safety.

(1) SHIP. The shipowner will contribute on the sum "for which the owner as a reasonable man would be willing to sell her" on arrival at her destination, or, if the voyage is broken up at an intermediate port, at the place where this

occurs. The rules laid down by Mr. Stevens many years ago will be found to agree in principle with the method adopted to-day.

From the original value of the vessel when she sailed he would deduct (1) the provisions and stores expended, (2) the wear and tear of the voyage, (3) any partial loss incurred up to the time when the general average loss took place.

This last item has now been extended and the ship will contribute only on her actual value at destination, so that her contributory value will be ascertained by deducting from the value at the commencement of the voyage, the cost of any repairs which have become necessary in consequence of damage sustained, or further sacrifices having been made subsequent to the general average loss which is the subject of the adjustment, in addition to any damage sustained prior to the general average act.

If the sacrifice is a sacrifice of ship's materials, or damage is sustained as the result of a general average act, the amount sacrificed or the value of the repairs made good in general average is added to the contributory value of the vessel.

"It may be pointed out once for all, as applicable not only to jettison but to all kinds of general average, that the equality of contribution, as between those whose property has been sacrificed and those whose property has been preserved, is attained by a simple contrivance, universal in the practice for adjusting averages. The amount made good in respect of property sacrificed is brought in as contributing rateably with the property preserved; so that the former pays the same proportion of general average as the latter." (Lowndes on General Average.)

(2) GOODS. The merchant will contribute on the net arrived market value at destination or at the point where the venture is broken up. This will be arrived at by adopting the principles indicated in the examination of the amount to be made good in respect of cargo sacrificed; the deductions from the gross value will be all those expenses which are incidental to the safe arrival of the goods.

(3) FREIGHT. Freight which has been paid by the shipper is included in the value of the cargo and therefore ceases to have a separate contributory value, but freight at risk (i.e. freight which has not been paid to the shipowner but which becomes due to him on the safe arrival of the cargo) will contribute on the "actual sum finally received as freight after deducting all the expenses of earning it." Both the owner of the goods sacrificed and the shipowner who has lost freight in consequence of the sacrifice must contribute in accordance with the principle enunciated in the extract printed above.

If, therefore, cargo value £4,500 (on which freight would have been due to the extent of £500) is jettisoned and the total value of ship, freight, and goods before the sacrifice is £50,000—

The cargo sacrificed will pay one-tenth	£450
The freight on cargo sacrificed will pay one-tenth ..	50
And the property saved will pay nine-tenths ..	4,500
	£5,000

The owner of the cargo sacrificed therefore will receive..	£4,500	as amount made good in general average.
less ..	450	general average contribution.
	£4,050	
And the shipowner will receive..	£500	as amount made good in general average.
less ..	50	general average contribution.
	£450	

Where the general average loss takes the form of a general average expenditure, then each class of interest bears its proportion on the basis of contribution already discussed.

If the value of the vessel is	£25,000
The net value of the cargo	32,000
And the net amount of freight	3,000
	£60,000
And the expenditure incurred is	£600
The shipowner in respect of the vessel will pay ..	£250
The owner of the cargo will pay	320
And the shipowner, on the freight will pay ..	30
	£600

The principle of general average contribution is clearly indicated by Arnould when he says " that all the parties interested in the adventure for the benefit of which the loss was incurred should be sufferers by the loss in exact proportion to the extent of their respective interests but no farther; and this object can only be attained when the party whose property has been sacrificed, whose money has been disbursed, or whose credit has been pledged for the general benefit, is placed, by the result of the adjustment, exactly in the same position he would have stood in had the sacrifice been made, the expense incurred, or the credit pledged, not by himself, but by some other of his co-adventurers."

The Adjustment.

The shipowner has the right to select the adjuster who is to prepare the adjustment, and this must be prepared in accordance with the law of the port of destination or the port at which the adventure is broken up.

This rule was established in two cases.

In the first case, the vessel, after the sacrifice had been made, proceeded to her destination, and it was held that "the adjustment of a general average at the port of discharge, according to the law prevailing there, is binding upon the shipowner and the merchant, as they must be taken to have assented to adjustment being made at the usual and proper place, and, as a consequence, according to the law of that place," and in the second case, where the voyage had been broken up, it was held that "although in general the port of destination was the proper place for adjusting a general average, yet when the voyage was broken up, and the adventure brought to an end at some other place, the average should be adjusted there, and by the law which there prevailed." It will be seen from these two statements of the position in English law that the laws prevailing at the port of destination or the place at which the voyage is broken up (which may be in either case a port in a country where the practice differs considerably from English custom) are recognized, and in order that merchant and shipowners may protect themselves from any additional liability which would be thrown upon them under such circumstances, it is usual for the contract of affreightment to contain a special agreement that: "*Average, if any, to be adjusted according to British custom*" or "*Average to be adjusted according to York-Antwerp rules.*" (See Appendices D and E.) By this means both shipowner and shipper agree that they shall only be bound by British custom where the first clause is used, and by the York-Antwerp rules where the second clause is inserted, so that the application of foreign law is ignored in one case and restricted in the other.

The work of adjustment is frequently a long process, and to prevent any loss to the shipowner, who is responsible to all the parties interested for the proper adjustment, it is usual to collect from all who are liable to contribute a deposit which it is estimated will cover the amount eventually due from them. Should the deposit be found too large, then a

refund is made, and should it prove too small a further demand will be made. The shipowner has the legal right to retain goods until the shipper has paid the amount he is liable to contribute in general average, but the system of collecting a deposit is a practical method of avoiding the loss which would follow the delay incidental to the insistence of the shipowner upon his legal rights.

It is the practice in this country to place all sums so collected under the control of trustees, who represent both shipowners and shippers, and the interest which is earned on amounts which are placed in the bank is credited to all parties. On the Continent, and in other countries, this practice is not followed. In some places the whole of the funds are held by the shipowner, but there is, at present, no uniform practice. There are indications, however, that the English practice will be adopted by all other nations.

CHAPTER XXIV

GENERAL AVERAGE AND MARINE INSURANCE

It has already been pointed out that any person who has property on board a vessel is liable either to have his property sacrificed, in which case he will receive a contribution from the other persons interested in the adventure, or to contribute to make good any loss or sacrifice which falls upon any other party to the adventure. These liabilities exist quite independently of the question of Insurance.

General Average Recoverable from Underwriters.

Should he be insured, however, he is entitled to claim direct from his underwriter the insured value of any goods sacrificed. This right is clearly expressed in Section 66 (4).

> " Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him ; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute."

This principle has been acted upon since 1868, and was determined in the case of *Dickenson* v. *Jardine* when it was held that as " the goods are insured against jettison, and they were jettisoned ; therefore they were lost by the perils insured against. It is true, there is a right to contribution from the ship and the cargo, provided they arrive safe ; but, as between the assured and the underwriter, the latter must indemnify the assured, and they will then stand in the position of the insured and be able to sue in his name." " The effect is that the underwriters must first fulfil their contract, and then collect in the assured's name whatever may diminish their loss."

Where there is a general average loss, therefore, the assured must, on settlement of his claim, hand over to his

underwriters all the rights of every description which may exist in respect of the property sacrificed. The underwriters thus become entitled to the amount of compensation which attaches to the property, even though the amount to be made good is much greater or less than the insured value. We have noted that where damage is caused to a vessel as a result of a general average act, certain deductions are made in general average from the amount of repairs, in respect of old materials replaced by new, but the Institute Time Clauses and the clauses generally which are attached to policies on steamers contain the clause "*Average payable . . . . without deduction of thirds, new, for old, whether the average be particular or general.*" In the event of general average loss, the underwriter will, under this clause, be compelled to pay to the assured the full amount of the repairs but will only receive contribution from the other parties to the adventure on the basis of the cost of the repairs *minus* the deductions made by the average adjuster in accordance with custom. In the case of general average contribution, if goods are insured up to or beyond the contributory value, underwriters will pay the amount which has been paid, but should the goods be insured below these values they will only pay in proportion. The Marine Insurance Act is so clear on this point that comment is unnecessary—

> " Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer." (Section 66 (5).)

" Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value, but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which

constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute." (Section 73 (1).)

Underwriters, in many cases, enter into an agreement with shipowners to pay any general average contribution which may eventually attach to the interests which they have insured and in return the shipowner will allow delivery of such interests without the payment of any deposit and so dispense with the cost of collection. In the more serious cases, however, shipowners insist on the payment of a deposit; although underwriters are not legally liable to refund such deposits to the insured they invariably do so on the production of the Deposit Receipt.

York-Antwerp Rules.

Reference has already been made to the York-Antwerp Rules. These rules differ in so many points from English law and yet by the insertion in policies of the clause—

"*General average and salvage charges payable as per foreign adjustment, or per York-Antwerp Rules, if in accordance with the contract of affreightment*"—become part of the contract between underwriter and assured, that it is thought well to print them in full in the Appendix. Special attention is called to Rule X, Expenses at Port of Refuge, etc. It will be noticed that no difference is made between the cases where a ship has to put into a port of refuge to repair particular average damage or to repair damage sustained as the result of a general average act.

RULE XVII, *Contributory Values*, is important for the clear rule which is laid down that contributions shall be made upon the actual values at the termination of the adventure. From this it follows that there can be no collection where property is totally lost subsequent to the general average loss.

The York-Antwerp Rules were revised at the Stockholm Conference of the International Law Association in 1924, and Rules *A* to *G* inclusive, which define the principles of General

Average, are of great importance. The full Rules are printed in Appendix D.

British Law of General Average.

Whilst the York-Antwerp Rules are in international use, British law on the subject of General Average is largely embodied in the Rules of Practice of the Association of Average Adjusters. The members of this Association comprise the leading Average Adjusters in Great Britain, and the Rules, which are printed in Appendix E, are based upon laws and customs which have been collated through the ages. Upon reference to the appendix it will be noted that a certain number of the Rules relate to the adjustment of Particular Average losses.

CHAPTER XXV

SALVAGE

SALVAGE forms part of Maritime Law and must be considered as being quite apart from marine insurance. The term itself is generally understood to describe property which has been saved, although, strictly speaking, it relates to the reward under Maritime Law to a salvor for saving or helping to save property and/or life at sea. Salvage services are services rendered by third parties independently of contract, and must be successful or, at least, partly so to form the subject of a claim to a salvage award. Services on the part of the captain or crew of the vessel cannot result in a salvage award as, in Maritime Law, the salvor must not be under legal obligation to act. Having rendered services giving rise to an award, salvors can enforce their claim by exercising a lien on the property saved and, in the absence of agreement with the owners of the property, may institute proceedings before the Admiralty Court. It may be mentioned that the latter course is usually adopted.

Services rendered in towing a damaged vessel into port or in saving cargo from a vessel which has stranded in such a position that she cannot be refloated are typical examples of salvage service.

Salvage charges incurred in preventing a loss by perils insured against are recoverable from underwriters as a loss by those perils. (Section 65 (1) and (2).) They are apportioned over the salved values of the interests saved, and the rules as to measure of indemnity are the same as those applying to General Average. (Section 73 (1) and (2).)

Section 65 (2) defines salvage charges as follows—

> "Salvage charges" means the charges recoverable under Maritime Law by a salvor independently of contract. They do not include the expenses of services in the nature of

salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

In most cases, services are performed subject to contract as between the master of the vessel, acting on behalf of all the interests affected by the casualty, and the salvors, Lloyd's standard form of salvage agreement on a "no cure—no pay" basis being the form of contract normally used, and it will therefore be seen that rewards for such services cannot be treated strictly as "salvage charges." They are particular charges, if relating to a particular interest, or general average expenditure if the services are rendered in the interests of the adventure as a whole, and in either case are recoverable from underwriters in accordance with the provisions of Chapters XVIII and XXIV.

It only remains to add that salvage charges, like particular charges, are distinct from particular average, and are recoverable irrespective of any particular average warranty or franchise, always provided they are incurred to avert or minimize a loss covered by the policy.

CHAPTER XXVI

INSTITUTE CLAUSES

It is only possible to call attention to the great increase in the number of clauses which have been framed and sanctioned by the Institute of London Underwriters. These are so numerous that they are now printed for reference in a book of many pages. [1]

For convenience, the most important clauses in use are printed here, but it must be pointed out that clauses are subject to revision, which usually takes effect from 1st January or 1st July in each year.

INSTITUTE CARGO CLAUSES (W.A.)

Warehouse to warehouse clause.

1. This insurance attaches from the time the goods leave the Warehouse and/or Store at the place named in the policy for the commencement of the transit and continues during the ordinary course of transit, including customary transhipment if any, until the goods are discharged overside from the overseas vessel at the final port. Thereafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named in the policy or until the expiry of 15 days (or 30 days if the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overside of the goods hereby insured from the overseas vessel is completed. Held covered at a premium to be arranged in the event of transhipment, if any, other than as above and/or in the event of delay in excess of the above time limits arising from circumstances beyond the control of the assured.

Craft, etc., clause.

2. Including transit by craft, raft and/or lighter to and from the vessel. Each craft, raft, and/or lighter to be deemed a separate insurance. The assured are not to be prejudiced by any agreement exempting lightermen from liability.

Deviation clause.

3. Held covered at a premium to be arranged in case of deviation or change of voyage, or other variation of the

[1] *Marine Clauses.* (Witherby & Co.)

adventure by reason of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment, or of any omission or error in the description of the interest vessel or voyage.

Liberties clause. Termination of contract of affreightment.

4. In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named therein, the goods are held covered in terms of the policy at a premium to be arranged until sold and delivered at such port or place, or notice be given to Underwriters to terminate the policy whichever first occurs; or, if the goods be forwarded to the destination named herein or to any other destination, until arrival at destination (subject to the provisions of clause 1 as to the period covered after discharge overside from the overseas vessel at final port); provided always that no liability shall attach to this policy for loss or damage occurring after the termination of such contract of affreightment and proximately caused by delay or inherent vice or nature of the subject matter insured.

Average clause.

5. Warranted free from average under the percentage specified in the Policy, unless general, or the vessel or craft be stranded, sunk or burnt, but notwithstanding this warranty the Underwriters are to pay the insured value of any package which may be totally lost in loading, transhipment or discharge, also for any loss of or damage to the interest insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress. This Clause shall operate during the whole period covered by the Policy.

G/A clause.

6. General Average and Salvage Charges payable according to Foreign Statement or per York-Antwerp Rules if in accordance with the contract of affreightment.

Bill of Lading, etc., clause.

7. The Assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Underwriters is hereby admitted and the wrongful act or misconduct of the shipowner or his servants causing a loss is not to defeat the recovery by an innocent Assured if the loss in the absence of such wrongful act or misconduct would have been a loss recoverable on the Policy. With leave to sail with or without pilots, and to tow and assist vessels or craft in all situations, and to be towed.

Bailee clause.

8. Warranted free from liability for loss of or damage to the goods whilst in the custody or care of any carrier or other bailee who may be liable for such loss or damage but only to the extent of such carrier's or bailee's liability.

Warranted free of any claim in respect of goods shipped

under a Bill of Lading or contract of carriage stipulating that the carrier or other bailee shall have the benefit of any insurance on such goods, but this warranty shall apply only to claims for which the carrier or other bailee is liable under the Bill of Lading or contract of carriage.

Notwithstanding the warranties contained in this clause it is agreed that in the event of loss of or damage to the goods by a peril or perils insured against by this policy for which the carrier or bailee denies or fails to meet his liability the Underwriters shall advance to the assured as a loan without interest a sum equal to the amount they would have been liable to pay under this policy but for the above warranties the repayment thereof to be conditional upon and only to the extent of any recovery which the assured may receive from the carrier or bailee.

It is further agreed that the assured shall with all diligence bring and prosecute under the direction and control of the Underwriters such suit or other proceedings to enforce the liability of the carrier or bailee as the Underwriters shall require and the Underwriters agree to pay such proportion of the costs and expenses of any such suit or proceedings as attach to the amount advanced under the policy.

F.C. & S. clause.

9. Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military, or air force in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

Should Clause No. 9 be deleted, the current Institute War Clauses relevant to the particular form of transit covered by this insurance shall be deemed to form part of this contract.

Strikes, riots and civil commotions clause.

10. Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labour disturbances, riots or civil commotions.

Should Clause No. 10 be deleted, the current Institute Strike Clauses shall be deemed to form part of this contract.

"Both to Blame Collision" clause.

11. Agreed that this policy is extended to indemnify the Assured against such proportion of liability under the

Bill of Lading "Both to Blame Collision" Clause as is in respect of a loss recoverable under the policy.

In the event of any claim by shipowners under the said clause the Assured agrees to notify the Assurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

NOTE. It is necessary for the assured to give prompt notice to Underwriters when they become aware of an event for which they are "held covered" under this policy and the right to such cover is dependent on compliance with this obligation.

INSTITUTE CARGO CLAUSES (F.P.A.)

The clauses numbered 1 to 4 and 6 to 11 appear in both forms of the Institute Cargo clauses, but in the F.P.A. form the following clause appears as No. 5—

5. Warranted free from Particular Average unless the vessel or craft be stranded, sunk, or burnt, but notwithstanding this warranty the Underwriters are to pay the insured value of any package or packages which may be totally lost in loading, transhipment or discharge, also for any loss of or damage to the interest insured which may reasonably be attributed to fire, collision, or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress, also to pay landing, warehousing, forwarding and special charges if incurred for which underwriters would be liable under a policy covering Particular Average. This clause shall operate during the whole period covered by the policy.

INSTITUTE WAR CLAUSES

1. This policy covers—

(*a*) the risks excluded from the Standard Form of English Marine Policy by the clause—

"Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy."

(*b*) loss of or damage to the interest hereby insured caused by—

(1) hostilities, warlike operations, civil war, revolution, rebellion, insurrection or civil strife arising therefrom

(2) mines, torpedoes, bombs or other engines of war

but excluding loss or damage covered by the Standard Form of English Marine Policy with the Free of Capture, etc., Clause (as quoted in 1 (*a*)) inserted therein.

2. Notwithstanding the provisions of Clause 1, this policy is warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or detainments of Kings Princes Peoples Usurpers or persons attempting to usurp power.

3. The insurance against the risks covered by these clauses attaches only as the interest hereby insured is first loaded on the vessel or craft after such interest leaves the warehouse at the place named in the policy for the commencement of the transit and ceases to attach as the interest is discharged overside finally from the vessel or craft prior to delivery to warehouse at the destination named in the policy (or a substituted destination as provided in Clause 6).

4. *If anything contained in this policy shall be inconsistent with Clauses 2 and 3, it shall to the extent of such inconsistency be null and void.*

5. This insurance covers the interest hereby insured during—

(i) transit by craft to or from the vessel.

(ii) deviation, delay, forced discharge, re-shipment and trans-shipment.

(iii) any other variation of the adventure arising from the exercise of a liberty granted to the shipowner or charterer under the contract of affreightment.

6. In the event of the interest hereby insured being discharged at a port or place other than the destination named herein, in circumstances beyond the control of the Assured, the insurance continues until the interest is sold and delivered, at such port or place; or, if the interest be not sold but forwarded by vessel or craft to the destination named herein or to any other destination, the insurance continues until the vessel or craft arrives at the original or substituted final port or place of discharge and thereafter as provided in Clause 3.

7. Held covered at a premium to be arranged in case of change of voyage or of any omission or error in the description of the interest, vessel or voyage.

8. Warranted free of loss or damage proximately caused by delay, inherent vice or loss of market, or of any claim for expenses arising from delay except such expenses as would be recoverable in principle in English law and practice under York-Antwerp Rules 1924.

9. General average and salvage charges payable (subject to the terms of these clauses) according to Foreign Statement or York-Antwerp Rules if in accordance with the contract of affreightment.

10. Claims for loss or damage within the terms of these clauses shall be payable without reference to average conditions.

11. *It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.*

INSTITUTE STRIKE CLAUSES (26.4.37.)

1. This Policy covers—

(*a*) the risks excluded from the Standard Form of English Marine Policy by the clause—

"Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labour disturbances riots or civil commotions."

(*b*) theft or pilferage by, or other loss of or damage to the property hereby insured caused by, strikers locked-out workmen or persons taking part in labour disturbances riots or civil commotions.

(*c*) destruction of or damage to the property hereby insured caused by persons acting maliciously.

The above-mentioned clauses shall not cover theft pilferage loss or damage caused by hostilities warlike operations civil war, or by revolution rebellion insurrection or civil strife arising therefrom.

Warranted free of loss or damage proximately caused by delay inherent vice or loss of market, or of any claim for expenses arising from delay except such expenses as would be recoverable in principle in English law and practice under York-Antwerp Rules 1924.

General average and salvage charges payable (subject to the terms of these clauses) according to Foreign Statement or York-Antwerp Rules if in accordance with the contract of affreightment.

Claims for loss or damage within the terms of these clauses shall be payable without reference to conditions of average.

2. Held covered at a premium to be arranged in case of deviation or change of voyage, or other variation of the adventure by reason of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment, or of any omission or error in the description of the interest vessel or voyage.

3. In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named therein, the goods are held covered in terms of these clauses at a premium to be arranged until sold and delivered at such port or place or notice be given to Underwriters to terminate the policy whichever first occurs; or, if the goods be forwarded to the destination named herein or to any other destination, until arrival at destination (subject to the provisions of clause 4 as to the period covered after discharge overside from the overseas vessel at final port).

N.B. The Institute Strike Clauses (26th April, 1937) are at present (1946) out of use and are replaced by clauses covering the insured goods for the same period as the Institute Cargo Clauses (Wartime Extension, which are printed on page 156).

4. This insurance attaches from the time the goods leave the Warehouse and/or Store at the place named in the policy for the commencement of the transit and continues during the ordinary course of transit, including customary transhipment if any, until the goods are discharged overside from the overseas vessel at the final port. Thereafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named in the policy or until the expiry of 15 days (or 30 days if the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overside of the goods hereby insured from the overseas vessel is completed. Held covered at a premium to be arranged in the event of transhipment, if any, other than as above and/or in the event of delay in excess of the above time limits arising from circumstances beyond the control of the Assured.

NOTE. It is necessary for the Assured to give prompt notice to underwriters when he becomes aware of an event for which he is "held covered" under this policy and the right to such cover is dependent on compliance with this obligation.

INSTITUTE CARGO CLAUSES
(WARTIME EXTENSION)

Clauses 1, 3 and 4 of the Institute Cargo Clauses are deemed to be deleted and the following clauses substituted—

1. This insurance attaches from the time the goods leave the warehouse at the place named in the policy for the commencement of the transit and continues until the goods are delivered to the final warehouse at the destination named in the policy or a substituted destination as provided in Clause 3 hereunder.

2. This insurance specially to cover the goods during

(i) deviation, delay, forced discharge, re-shipment and transhipment.

(ii) any other variation of the adventure arising from the exercise of a liberty granted to the shipowner or charterer under the contract of affreightment.

3. In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named herein, the insurance continues until the goods are sold and delivered at such port or place; or, if the goods be not sold but are forwarded to the destination named herein or to any other destination this insurance continues until the goods have arrived at final warehouse as provided in Clause 1.

4. If while this insurance is still in force and before the expiry of 15 days from midnight of the day on which the discharge overside of the goods hereby insured from the overseas vessel at the final port of discharge is completed, the goods are re-sold (not being a sale within the terms of Clause 3) and are to be forwarded to a destination other than that covered by this insurance, the goods are covered hereunder while deposited at such port of discharge until again in transit or until the

expiry of the aforementioned 15 days whichever shall first occur. If a sale is effected after the expiry of the aforementioned 15 days while this insurance is still in force the protection afforded hereunder shall cease as from the time of the sale.

5. Held covered at a premium to be arranged in case of change of voyage or of any omission or error in the description of the interest vessel or voyage.

6. This insurance shall in no case be deemed to extend to cover loss damage or expense proximately caused by delay or inherent vice or nature of the subject-matter insured.

7. It is a condition of this insurance that the assured shall act with reasonable despatch in all circumstances within their control.

INSTITUTE THEFT, PILFERAGE, AND NON-DELIVERY (SHIPPING VALUE) CLAUSE

(*a*) It is hereby agreed that this Policy covers the risk of Theft and/or Pilferage irrespective of percentage but Underwriters' liability in respect of any goods so lost not to exceed their shipping or insured value whichever is the smaller. No liability for loss to attach hereto unless notice of survey has been given to Underwriters' Agents within ten days of the expiry of risk under the Policy.

(*b*) It is hereby agreed that this Policy covers the risk of Non-Delivery of an entire package for which the liability of the Shipowner or other Carrier is limited, reduced or negatived by the Contract of Carriage by reason of the value of the goods, but Underwriters' liability in respect of any goods so lost not to exceed their shipping or insured value whichever is the smaller.

" Shipping Value " as used above means the prime cost of the goods to the Assured by whom or on whose behalf the insurance is effected plus the expenses of and incidental to shipping and the charges of insurance.

Underwriters to be entitled to any amount recovered from the Carriers or others in respect of such losses (less cost of recovery if any) up to the amount paid by them in respect of the loss.

This clause, which originally rendered underwriters liable up to 75 per cent only of the shipping value, was introduced on account of the prevalence of pilferage in every part of the world. The intention of the clause is to make shipowners, shippers, and underwriters jointly concerned in the safe carriage of goods, and to ensure that each party to the contract of carriage will take every precaution to avoid loss by pilferage.

INSTITUTE THEFT, PILFERAGE, AND NON-DELIVERY (INSURED VALUE) CLAUSE

(*a*) It is hereby agreed that this Policy covers the risk of Theft and/or Pilferage irrespective of percentage. No liability for loss to

attach hereto unless notice of survey has been given to Underwriters' Agents within ten days of the expiry of risk under the Policy.

(*b*) It is hereby agreed that this Policy covers the risk of Non-Delivery of an entire package for which the liability of the Shipowner or other Carrier is limited, reduced or negatived by the Contract of Carriage by reason of the value of the goods.

Underwriters to be entitled to any amount recovered from the Carriers or others in respect of such losses (less cost of recovery if any) up to the amount paid by them in respect of the loss.

This clause is used where the liability under the policy is based upon the insured value without reference to the shipping value.

Institute Time Clauses—Hull and Freight.

The chief features of insurances on Hulls are considered in Chapter XIX, and the main points in connection with Freight in Chapter XXII. It is not possible, within the limits of this work, to examine the clauses which are printed below in detail, but both the Institute Hull and the Institute Freight Clauses should be read very carefully.

INSTITUTE TIME CLAUSES
HULLS

1. And it is further agreed that if the Ship hereby Insured shall come into collision with any other Ship or Vessel and the Assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision the Underwriters will pay the Assured such proportion of three-fourths of such sum or sums so paid as their respective subscriptions hereto bear to the value of the Ship hereby Insured, provided always that their liability in respect of any one such collision shall not exceed their proportionate part of three-fourths of the value of the Ship hereby Insured, and in cases in which the liability of the Ship has been contested, or proceedings have been taken to limit liability, with the consent in writing of the Undersigned, they will also pay a like proportion of three-fourths of the costs which the Assured shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the Owners of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

Provided always that this Clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers,

stages, and similar structures, consequent on such collision: or in respect of the cargo or engagements of the Insured Vessel, or for loss of life or personal injury.

2. Should the Vessel hereby insured come into collision with or receive salvage services from another Vessel belonging wholly or in part to the same owners, or under the same management, the Assured shall have the same rights under this policy as they would have were the other Vessel entirely the property of owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered, shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

3. The Vessel is covered subject to the provisions of this Policy at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but if without the approval of Underwriters the Vessel be towed, except as is customary or when in need of assistance, or undertakes towage or salvage services under a pre-arranged contract made by Owners and/or Charterers, no liability shall attach to this Policy for any claim arising from a casualty occurring during the period when so engaged. This clause shall not exclude customary towage by the Vessel in connection with loading and discharging.

4. Should the Vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a *pro rata* monthly premium, to her port of destination.

5. Held covered in case of any breach of warranty as to cargo, trade, locality, towage, salvage services or date of sailing, provided notice be given immediately after receipt of advices and any additional premium required be agreed.

6. Should the Vessel be sold or transferred to new management, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board, and has already sailed from her loading port or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A *pro rata* daily return of premiums shall be made. This clause shall prevail, notwithstanding any provision whether written typed or printed in the policy inconsistent herewith.

7. This insurance also specially to cover (subject to the free of average warranty) loss of or damage to hull or machinery directly caused by the following—

Accidents in loading discharging or handling cargo, or in bunkering or in taking in fuel.

Explosions on shipboard or elsewhere.

Bursting of boilers, breakage of shafts or any latent defect in the machinery or hull.

Contact with Aircraft.

Negligence of Master, Mariners, Engineers or Pilots.

Provided such loss or damage has not resulted from want of due diligence by the Owners of the Vessel, or any of them, or by the Managers.

Masters, Mates, Engineers, Pilots or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the Vessel.

8. General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules 1890 (omitting in the case of wood cargoes the first word, "No" of Rule I) or York-Antwerp Rules 1924.

When the vessel sails in ballast, not under charter, the provisions of the York/Antwerp Rules 1924 (excluding Rules XXI and XXII) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

9. In the event of expenditure for Salvage, Salvage charges, or under the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the insurer is liable bears to the value of the salved property.

Provided that where there are no proceeds or there are expenses in excess of the proceeds, the expenses, or the excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident and this policy without any deduction for loss and/or damage shall bear its *pro rata* share of such expenses or excess of expenses accordingly.

10. Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

11. Donkey boilers, winches, cranes, windlasses, steering gear and electric light apparatus shall be deemed to be part of the hull, and not part of the machinery. Refrigerating machinery and insulation not covered unless expressly included in this policy.

12. Warranted free from particular average under 3 per cent, but nevertheless, when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, Underwriters shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid if reasonably incurred, even if no damage be found.

13. No claim shall in any case be allowed in respect of scraping or painting the Vessel's bottom.

14. Grounding in the Panama Canal, Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above a line drawn from the North Basin

Buenos Aires to the mouth of the San Pedro River) or its tributaries, or in the Danube or Demerara Rivers or on the Yenikale Bar, shall not be deemed to be a stranding.

15. The warranty and conditions as to average under 3 per cent shall be applicable to each voyage as if separately insured and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.—

(*a*) at any time at which the vessel (1) begins to load cargo, or (2) sails in ballast, or

(*b*) from delivery to the owners or the termination of periods in port as below.

A voyage may be deemed to continue until the vessel has made not more than three passages or has carried and discharged two cargoes whichever may first occur and further in either case for the period until the vessel begins to load cargo or sails in ballast, but subject to the "passage" limit as below.

A passage shall be deemed to be—

(1) from the commencement of loading at first port or place of loading until completion of discharge at last port or place of discharge, or

(2) when the vessel sails in ballast, from the port or place of departure until arrival at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only, or

(3) from delivery to the owners or the termination of periods in port as below until discharge as (1) if loaded or arrival as (2) if in ballast.

Periods in Port. *Notwithstanding anything in these clauses to the contrary a passage shall be deemed to have terminated when the vessel has remained at a port or place other than a port or place of refuge for a period of* 30 *days.*

Each subsequent period of 30 *consecutive days or part thereof prior to the vessel commencing to load or sailing, whichever may first occur, shall be deemed to be a passage.*

When the vessel sails in ballast from one port or place to another to effect repairs of damage for which Underwriters are liable under the Policy current at time of sailing such passage with the previous passage shall be deemed to be one passage.

In calculating the 3 per cent above referred to particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage as defined herein, but only that portion of the claim arising within the period of this Policy shall be recoverable hereon.

A voyage shall not be so fixed that it overlaps another voyage on which a claim is made on this or the preceding or succeeding Policy.

Warranted that particular average occurring on a voyage or venture which is or would be excluded by the terms of this Policy shall not be included in calculating the 3 per cent above referred to.

16. In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

17. In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break up value of the Vessel or wreck shall be taken into account.

18. In the event of total or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

19. In the event of accident whereby loss or damage may result in a claim under this Policy notice shall be given in writing to the Underwriters where practicable and also, if abroad, to the nearest Lloyd's Agent prior to survey so that they may appoint their own surveyor if they so desire. The Underwriters shall be entitled to decide the port to which a damaged vessel shall proceed for docking or repairing (the actual additional expense of the voyage arising from compliance with Underwriters' requirements being refunded to the Assured) and Underwriters shall also have a right of veto in connection with the place of repair or repairing firm proposed and, whenever the extent of the damage is ascertainable the Underwriters may take or may require to be taken tenders for the repair of such damage.

In cases where a tender is accepted with the approval of Underwriters an allowance shall be made at the rate of 30 per cent per annum on the insured value for each day or part thereof from the time of the completion of the survey (such survey if not completed earlier to be deemed to have been completed in 72 hours from its commencement) until the acceptance of the tender provided that it be accepted without delay after receipt of Underwriters' approval.

No allowance shall be made for any time during which the vessel is loading or discharging cargo or bunkering or taking in fuel.

Due credit shall be given against the allowance as above for any amount recovered—

(*a*) in respect of fuel and stores and wages and maintenance of the Master Officers and Crew or any member thereof allowed in general or particular average,

(*b*) from third parties in respect of damages for detention and/or loss of profit and/or running expenses.

for the period covered by the tender allowance or any part thereof.

Where a part of the cost of average repairs other than a fixed deductible franchise is not recoverable from Underwriters the allowance shall be reduced by a similar proportion.

In the event of failure to comply with the conditions of this clause 15 per cent shall be deducted from the amount of the ascertained claim.

*20. Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat, also from the consequences of hostilities or warlike operations, whether

*It should be noted that Clause 20 (the F.C. & S. Clause) has now been replaced by the newer form of clause described in Chapter X.

there be a declaration of war or not, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

21. Warranted that the amount insured policy proof of interest or full interest admitted for account of assured and/or their managers and/or mortgagees on Disbursements, Commission, Profits or other interests, or excess or increased value of Hull and/or Machinery however described shall not exceed 10 per cent of the total insured value as stated herein but the assured are permitted to cover—

(*a*) *Freight and/or Chartered Freight on Board and/or not on Board and/or Anticipated Freight. Insured for* 12 *months or other time.* Any amount not exceeding 25 per cent of the total insured value as stated herein less any amount insured as above however described.

(*b*) *Freight on Board and/or contracted for on not exceeding two cargoes.* The amount of gross freight in respect of the current cargo passage and next succeeding cargo passage (including if required preliminary and/or intermediate ballast passages). Any amount insured under Section (*a*) to be taken into account and only the excess of such amount to be insured, which excess shall be reduced *pro rata* to the amount insured on such excess as advanced and/or earned.

(*c*) *Anticipated Freight if Vessel be in ballast and unchartered.* An amount representing the anticipated gross freight on next cargo passage such amount to be reasonably estimated on the basis of the current rate of freight at time of insurance but all freight covered under Section (*a*) to be deducted and only the excess, if any, to be insured.

(*d*) *Time Charter Hire or Profit on Time Charter or Charter for Series of Voyages.* Any amount not exceeding the reasonably estimated net profit, reducing as earned, for a period not exceeding the length of the charter. Any amount insured under Section (*a*) and/or (*b*) and/or (*c*) to be taken into account and only the excess of such amounts to be insured such excess reducing *pro rata* as earned.

(*e*) *Premiums.* Any amount not in excess of actual premiums for twelve months on all interests of whatsoever nature insured (including estimated premium on any Club Insurance) but in all cases reducing monthly by a proportionate amount of the whole.

(*f*) *Excess Liabilities* in the terms of the Institute Excess Clause—(Hulls) and other Excess Collision liability.

(*g*) Insurances on any interest irrespective of amount against—

(1) Risks excluded by Clause 20.

(2) Loss or damage in consequence of strikes, lockouts, political or labour disturbances, civil commotions, riots, martial law, military or usurped power or malicious act.

Provided always that a breach of this warranty shall not afford Underwriters any defence to a claim by Owners Mortgagees or other parties who may have accepted this policy without notice of such breach and are not parties or privy thereto.

22. TO RETURN:

per cent for each uncommenced month if this Policy be cancelled by agreement;

and as follows, for each period of 30 consecutive days the vessel may be laid up in port (with special liberties as hereinafter allowed)—

IN THE UNITED KINGDOM:

(*a*) per cent with no cargo on board and not under repair.

(*b*) per cent with no cargo on board but under repair.

(*c*) per cent with cargo on board and not under repair.

(*d*) per cent with cargo on board and under repair.

ABROAD:

(whether under repair or not),

(*e*) per cent with no cargo on board.

(*f*) per cent with cargo on board.

} and arrival

For the purpose of this clause, the expressions "with no cargo on board" and "with cargo on board" shall be deemed to mean "with no cargo on board except while loading or discharging" and "with cargo on board other than while loading or discharging," respectively.

The returns (*b*) to (*f*) inclusive, shall be applied notwithstanding that the vessel has cargo on board and/or is under repair during a part only of the period of 30 days for which a return is claimable.

Provided always—

(*a*) that in no case shall a return be allowed when the within-named vessel is lying in a roadstead or in exposed and unprotected waters,

(*b*) that in the event of a return for special trade, or any other reason, being recoverable, the above rates of return of premium shall be reduced accordingly.

In the event of the vessel being laid up in port for a period of 30 consecutive days a part only of which attaches to this policy it is hereby agreed that the laying up period in which either the commencing or ending date of this policy falls shall be deemed to run from the first day on which the vessel is laid up and that on this basis Underwriters shall pay such proportion of the return due in respect of a full period of 30 days as the number of days attaching hereto bear to thirty.

23. It is agreed that no assignment of or interest in this Policy or in any moneys which may be or become payable thereunder is to be binding on or recognized by the Underwriters unless a dated notice of such assignment or interest signed by the assured and (in the case of subsequent assignment) by the assignor be endorsed on this Policy and the Policy with such endorsement be produced before payment of any claim or return of premium thereunder. But nothing in this clause is to have effect as an agreement by the Underwriters to a sale or transfer to new management.

INSTITUTE TIME CLAUSES
FREIGHT

1. The vessel is covered subject to the provisions of this Policy at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but if without the approval of Underwriters the vessel be towed, except as is customary or when in need of assistance, or undertakes towage or salvage services under a pre-arranged contract made by Owners and/or Charterers, no liability shall attach to this policy for any claim arising from a casualty occurring during the period when so engaged. This clause shall not exclude customary towage by the vessel in connection with loading and discharging.

2. Including risk of craft and/or lighter to and from the ship. Each craft and/or lighter to be deemed a separate insurance if desired by the assured.

3. General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject: but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules 1890 (omitting in the case of wood cargoes the first word, "No." of Rule I) or York-Antwerp Rules 1924.

4. Warranted free from particular average under 3 per cent unless the ship be stranded, sunk, or on fire. Underwriters notwithstanding this warranty to pay for any damage or loss caused by fire or collision with another ship or vessel.

5. In the event of the total loss, whether absolute or constructive of the steamer the amount underwritten by this Policy shall be paid in full, whether the steamer be fully or only partly loaded or in ballast, chartered or unchartered.

6. In ascertaining whether the vessel is a constructive total loss the insured value in the policies on ship shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

7. In calculating the amount due under this Policy in respect of any claim except under Clauses 3 and 5, all insurances on Freight (including honour Polices on Freight) shall be taken into consideration, and when the total of such insurances exceeds in amount the gross freight actually at risk only a rateable proportion of the gross freight lost shall be recoverable under this Policy, notwithstanding any valuation therein.

8. Warranted free from any claim consequent on loss of time whether arising from a peril of the sea or otherwise.

9. Should the Vessel be sold or transferred to new management, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A *pro rata* daily

return of premium shall be made. This clause shall prevail, notwithstanding any provision whether written typed or printed in the policy inconsistent herewith.

10. It is further agreed that should the within-named Vessel receive salvage services from another vessel belonging wholly or in part to the same owners, or under the same management, the assured shall have the same rights under this policy as they would have were the other vessel entirely the property of owners not interested in the within-named vessel; but in such cases the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the assured.

11. Held covered in case of any breach of warranty as to cargo, trade, locality, towage, salvage services or date of sailing, provided notice be given immediately after receipt of advices and any additional premium required be agreed.

12. Should the vessel at the expiration of this policy be at sea or in distress or at a port of refuge or of call, the interest hereby insured shall, provided previous notice be given to the Underwriters, be held covered at a *pro rata* monthly premium to her port of destination.

*13. Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

14. TO RETURN:

per cent for each uncommenced month if this Policy be cancelled by agreement;
and as follows, for each period of 30 consecutive days the vessel may be laid up in port (with special liberties as hereinafter allowed and whether under repair or not)—

(*a*) per cent with no cargo on board.
(*b*) per cent with cargo on board.

For the purpose of this clause, the expressions "with no cargo on board" and "with cargo on board" shall be deemed to mean "with no cargo on board except while loading or discharging" and "with cargo on board other than while loading or discharging," respectively.

The return (*b*) shall be applied notwithstanding that the vessel has cargo on board during a part only of the period of 30 days for which a return is claimable.

} and arrival

Provided always—

(*a*) that in no case shall a return be allowed when the within named vessel is lying in a roadstead or in exposed and unprotected waters.

(*b*) that in the event of a return for special trade, or any other reason, being recoverable, the above rates of return of premium shall be reduced accordingly.

*It should be noted that Clause 13 (the F.C. & S. Clause) has now been replaced by the newer form of clause described in Chapter X.

In the event of the vessel being laid up in port for a period of 30 consecutive days a part only of which attaches to this policy it is hereby agreed that the laying up period in which either the commencing or ending date of this policy falls shall be deemed to run from the first day on which the vessel is laid up and that on this basis Underwriters shall pay such proportion of the return due in respect of a full period of 30 days as the number of days attaching hereto bear to thirty.

15. It is agreed that no assignment of or interest in this policy or in any moneys which may be or become payable thereunder is to be binding on or recognized by the Underwriters unless a dated notice of such assignment or interest signed by the assured and (in the case of subsequent assignment) by the assignor be endorsed on this policy and the policy with such endorsement be produced before payment of any claim or return of premium thereunder. But nothing in this clause is to have effect as an agreement by the Underwriters to a sale or transfer to new management.

GLOSSARY OF ABBREVIATIONS IN COMMON USE

A/P. . .	. Additional Premium
A.P. . .	. Average Payable
A.R. . .	. All Risks
c.d. . .	. Country Damage
c/l. . .	. Craft Loss
C.M.S. .	. Combined Marine Surcharge
C.T.L.O. .	. Constructive Total Loss Only
D/C. . .	. Deviation clause.
D/N. . .	. Debit Note
D/R. . .	. Deposit Receipt
F.A.A. .	. Free of All Average
F.C. & S. .	. Free of Capture and Seizure
F.G.A. .	. Foreign General Average
f.i.a. . .	. Full Interest Admitted
f.o.d. . .	. Free of Damage
F.P. . .	. Floating (or Open) Policy
F.P.A. .	. Free of Particular Average
f.w.d. .	. Freshwater Damage
G/A. .	. General Average
G/A. Dep. .	. General Average Deposit
H/C. . .	. Held Covered
h.d. . .	. Hook Damage
I/V. . .	. Increased Value
j. & w.o. .	. Jettison and Washing Overboard
n.d. . .	. Non-delivery
n.r.a.d. .	. No Risk After Discharge
o/c.d. .	. Other Cargo Damage
o.d. . .	. Oil Damage
O.P. . .	. Open Policy
P/A. . .	. Particular Average
P/L. . .	. Partial Loss
p.p.i. . .	. Policy Proof of Interest
R. & C.C. .	. Riots and Civil Commotions

R.D.C.	Running Down Clause (Collision Clause, Hull Policies)
R/P.	Return of Premium
S/C.	Salvage Charges
S/D.	Sea Damage
s.d.	Short Delivery
S/L.	Salvage Loss
S/L.cl.	Sue and Labour Clause
S.O.L.	Shipowner's Liability
S.R. & C.C.	Strikes Riots and Civil Commotions
T.L.O.	Total Loss Only
V.C.	Valuation Clause
W.A. or W.P.A.	With Particular Average
w.b.s.	Without Benefit of Salvage
W.E.C.	Wartime Extension Clauses
w.p.	Without Prejudice
W.R.O.	War Risk Only
Y.A.R.	York-Antwerp Rules of 1924 (General Average)

APPENDIX A

MARINE INSURANCE ACT, 1906

(6 EDW. 7. CH. 41)

A.D. 1906.

ARRANGEMENT OF SECTIONS

A.D. 1906.

Section.

The Policy

22. Contract must be embodied in policy.
23. What policy must specify.
24. Signature of insurer.
25. Voyage and time policies.
26. Designation of subject-matter.
27. Valued policy.
28. Unvalued policy.
29. Floating policy by ship or ships.
30. Construction of terms in policy.
31. Premium to be arranged.

Double Insurance

32. Double insurance.

Warranties, etc.

33. Nature of warranty.
34. When breach of warranty excused.
35. Express warranties.
36. Warranty of neutrality.
37. No implied warranty of nationality.
38. Warranty of good safety.
39. Warranty of seaworthiness of ship.
40. No implied warranty that goods are seaworthy.
41. Warranty of legality.

The Voyage

42. Implied condition as to commencement of risk.
43. Alteration of port of departure.
44. Sailing for different destination.
45. Change of voyage.
46. Deviation.
47. Several ports of discharge.
48. Delay in voyage.
49. Excuses for deviation or delay.

Assignment of Policy

50. When and how policy is assignable.
51. Assured who has no interest cannot assign.

The Premium

52. When premium payable.
53. Policy effected through broker.
54. Effect of receipt on policy.

A.D. 1906.

Section.

Loss and Abandonment

Partial Losses (including Salvage and General Average and Particular Charges)

Measure of Indemnity

Rights of Insurer on Payment

Return of Premium

Mutual Insurance

Supplemental

Section.

CHAPTER 41

(6 EDW. 7)

A.D. 1906.

AN Act to codify the Law relating to Marine Insurance

(21st December 1906.)

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

Marine Insurance

Marine insurance defined.

1. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

Mixed sea and land risks.

2.—(1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Marine adventure and maritime perils defined.

3.—(1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where—

(*a*) Any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";

(*b*) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

(*c*) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

" Maritime perils " means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy. A.D. 1906.

Insurable Interest

Avoiding of wagering or gaming contracts.

4.—(1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract—

(*a*) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(*b*) Where the policy is made " interest or no interest," or " without further proof of interest than the policy itself," or " without benefit of salvage to the insurer," or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

Insurable interest defined.

5.—(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may by prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

When interest must attach.

6.—(1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected:

Provided that where the subject-matter is insured " lost or not lost," the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

Defeasible or contingent interest.

7.—(1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have

A.D. 1906.

treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

Partial interest.

8. A partial interest of any nature is insurable.

Re-insurance.

9.—(1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance.

Bottomry.

10. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

Master's and seamen's wages.

11. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

Advance freight.

12. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

Charges of insurance.

13. The assured has an insurable interest in the charges of any insurance which he may effect.

Quantum of interest.

14.—(1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

Assignment of interest.

15. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law.

Insurable Value

Measure of insurable value.

16. Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows—

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated

by the policy, plus the charges of insurance upon the whole :

The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade :

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance :

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole :

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

Disclosure and Representations

Insurance is uberrimae fidei.

17. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

Disclosure by assured.

18.—(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely—

(*a*) Any circumstance which diminishes the risk ;

(*b*) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know ;

(*c*) Any circumstance as to which information is waived by the insurer ;

(*d*) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

A.D. 1906.

(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

(5) The term "circumstance" includes any communication made to, or information received by, the assured.

Disclosure by agent effecting insurance.

19. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer—

(*a*) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and

(*b*) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent.

Representations pending negotiation of contract.

20.—(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it be made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation be material or not is, in each case, a question of fact.

When contract is deemed to be concluded.

21. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it be unstamped.

The Policy

Contract must be embodied in policy.

22. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it

is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards. A.D. 1906.

What policy must specify.

23. A marine policy must specify—

(1) The name of the assured, or of some person who effects the insurance on his behalf:

(2) The subject-matter insured and the risk insured against:

(3) The voyage, or period of time, or both, as the case may be, covered by the insurance:

(4) The sum or sums insured:

(5) The name or names of the insurers.

Signature of insurer.

24.—(1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

Voyage and time policies.

25.—(1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy," and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy." A contract for both voyage and time may be included in the same policy.

1 Edw. 7 c. 7.

(2) Subject to the provisions of section eleven of the Finance Act, 1901, a time policy which is made for any time exceeding twelve months is invalid.

Designation of subject-matter.

26.—(1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

Valued policy.

27.—(1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

A.D. 1906.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

Unvalued policy.

28. An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner herein-before specified.

Floating policy by ship or ships.

29.—(1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

Construction of terms in policy.

30.—(1) A policy may be in the form in the First Schedule to this Act.

(2) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them.

Premium to be arranged.

31.—(1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

Double Insurance

Double insurance.

32.—(1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance— A.D. 1906.

(*a*) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(*b*) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;

(*c*) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

(*d*) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Warranties, etc.

Nature of warranty.

33.—(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

When breach of warranty excused.

34.—(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

(3) A breach of warranty may be waived by the insurer.

Express warranties.

35.—(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

A.D. 1906.

(2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith.

Warranty of neutrality.

36.—(1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

No implied warranty of nationality.

37. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

Warranty of good safety.

38. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

Warranty of seaworthiness of ship.

39.—(1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

No implied warranty that goods are seaworthy.

40.—(1) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.

(2) In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or others moveables to the destination contemplated by the policy. A.D. 1906.

Warranty of legality.

41. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

The Voyage

Implied condition as to commencement of risk.

42.—(1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

Alteration of port of departure.

43. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

Sailing for different destination.

44. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

Change of voyage.

45.—(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

Deviation.

46.—(1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy—

(*a*) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or

A.D. 1906.

(*b*) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

Several ports of discharge.

47.—(1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.

(2) Where the policy is to "ports of discharge," within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation.

Delay in voyage.

48. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable despatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

Excuses for deviation or delay.

49.—(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused—

(*a*) Where authorised by any special term in the policy; or

(*b*) Where caused by circumstances beyond the control of the master and his employer; or

(*c*) Where reasonably necessary in order to comply with an express or implied warranty; or

(*d*) Where reasonably necessary for the safety of the ship or subject-matter insured; or

(*e*) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(*f*) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(*g*) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage with reasonable despatch.

Assignment of Policy

When and how policy is assignable.

50.—(1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

A.D. 1906.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

Assured who has no interest cannot assign.

51. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss.

The Premium

When premium payable.

52. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium.

Policy effected through broker.

53.—(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

Effect of receipt on policy.

54. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.

Loss and Abandonment

Included and excluded losses.

55.—(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

A.D. 1906.

(2) In particular—

(*a*) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(*b*) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(*c*) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Partial and total loss.

56.—(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

Actual total loss.

57.—(1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

Missing ship.

58. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

Effect of transhipment, etc.

59. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and re-shipping the goods or other moveables, or in transhipping them, and sending them on to their

destination, the liability of the insurer continues, notwithstanding the landing or transhipment. A.D. 1906.

Constructive total loss defined.

60.—(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss—

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (*a*) it is unlikely that he can recover the ship or goods, as the case may be, or (*b*) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(ii) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

Effect of constructive total loss.

61. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

Notice of abandonment.

62.—(1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the

A.D. 1906.

loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

Effect of abandonment

63.—(1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

Partial Losses (including Salvage and General Average and Particular Charges)

Particular average loss.

64.—(1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

Salvage charges.

65.—(1) Subject to any express provision in the policy salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) "Salvage charges" means the charges recoverable

under maritime law by a salvor independently of contract. A.D. 1906.
They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

General average loss.

66.—(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

Measure of Indemnity

Extent of liability of insurer for loss.

67.—(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full

A.D. 1906.

extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

Total loss.

68. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured—

(1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy :

(2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

Partial loss of ship.

69. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows—

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty :

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above :

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

Partial loss of freight.

70. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

Partial loss of goods, merchandise, etc.

71. Where there is a partial loss of goods, merchandise, or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows—

(1) Where part of the goods, merchandise or other moveables insured by a valued policy is totally

lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy :

(2) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss :

(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrivals bears to the gross sound value :

(4) " Gross value " means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand ; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. " Gross proceeds " means the actual price obtained at a sale where all charges on sale are paid by the sellers.

Apportionment of valuation.

72.—(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

General average contributions and salvage charges.

73.—(1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory values ; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured,

A.D. 1906.

the indemnity payable by the insurer must be reduced in proportion to the under-insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

Liabilities to third parties.

74. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

General provisions as to measure of indemnity.

75.—(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

Particular average warranties.

76.—(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

A.D. 1906.

Successive losses.

77.—(1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss:

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

Suing and labouring clause.

78.—(1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

Rights of Insurer on Payment

Right of subrogation.

79.—(1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

Right of contribution.

80.—(1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in

A.D. 1906.

proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

Effect of under insurance.

81. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

Return of Premium

Enforcement of return.

82. Where the premium, or a proportionate part thereof is, by this Act, declared to be returnable—

(*a*) If already paid, it may be recovered by the assured from the insurer; and

(*b*) If unpaid, it may be retained by the assured or his agent.

Return by agreement.

83. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

Return for failure of consideration.

84.—(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured,

(3) In particular—

(*a*) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable:

(*b*) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or as the case may be, a proportionate part thereof, is returnable:

Provided that where the subject-matter has been insured "lost or not lost" and has

arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

(*c*) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering;

(*d*) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;

(*e*) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(*f*) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

Mutual Insurance

Modification of Act in case of mutual insurance.

85.—(1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

Supplemental

Ratification is assured.

86. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

A.D. 1906.

Implied obligations varied by agreement or usage.

87.—(1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

Reasonable time, etc., a question of fact.

88. Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

Slip as evidence.

89. Where there is a duty stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding.

Interpretation of terms.

90. In this Act, unless the context or subject-matter otherwise requires—

"Action" includes counter-claim and set off:

"Freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money:

"Moveables" means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents:

"Policy" means a marine policy.

Savings.

91.—(1) Nothing in this Act, or in any repeal effected thereby, shall affect—

54 & 55 Vict. c. 39.

(*a*) The provisions of the Stamp Act, 1891, or any enactment for the time being in force relating to the revenue;

25 & 26 Vict. c. 89.

(*b*) The provisions of the Companies Act, 1862, or any enactment amending or substituted for the same;

(*c*) The provisions of any statute not expressly repealed by this Act.

(2) The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

Repeals.

92. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule.

Commencement.

93. This Act shall come into operation on the first day of January one thousand nine hundred and seven.

Short title.

94. This Act may be cited as the Marine Insurance Act, 1906.

SCHEDULES

FIRST SCHEDULE

Note.—The first portion of this Schedule consists of the Form of Policy, which is shown in Chapter VI of this work.

Rules for Construction of Policy A.D. 1906.

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require—

1. Where the subject-matter is insured "lost or not lost," and the loss has occurred before the contract is concluded, the risk attaches unless, at such times the assured was aware of the loss, and the insurer was not. Lost or not lost.

2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured. From.

3.—(*a*) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately. At and from [Ship.]

(*b*) If she be not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(*c*) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety. [Freight.]

(*d*) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4. Where goods or other moveables are insured "from the loading thereof," the risk does not attach until such From the loading thereof.

A.D. 1906.

goods or moveables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

Safely landed.

5. Where the risk on goods or other moveables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

Touch and stay.

6. In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

Perils of the seas.

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

Pirates.

8. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

Thieves.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

Restraint of princes.

10. The term "arrests, etc., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

Barratry.

11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

All other perils.

12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

Average unless general.

13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges."

Stranded.

14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

Ship.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

Freight.

16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money.

Goods.

17. The term "goods" means goods in the nature of

merchandise, and does not include personal effects or provisions and stores for use on board. A.D. 1906.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

SECOND SCHEDULE

Section 92.

ENACTMENTS REPEALED

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 Geo. 2, c. 37	An Act to regulate insurance on ships belonging to the subjects of Great Britain, and on merchandizes or effects laden thereon.	The whole Act.
28 Geo. 3, c. 56	An Act to repeal an Act made in the twenty-fifth year of the reign of his present Majesty, intituled "An Act for regulating Insurances on Ships, and on goods, merchandizes, or effects," and for substituting other provisions for the like purpose in lieu thereof.	The whole Act as far as it relates to marine insurance.
31 & 32 Vict. c. 86.	The Policies of Marine Assurance Act, 1868.	The whole Act

APPENDIX B

MARINE INSURANCE (GAMBLING POLICIES) ACT, 1909

A.D. 1909.

CHAPTER XII

(9 EDW. 7)

AN Act to prohibit Gambling on Loss by Maritime Perils. [20th October, 1909.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

Prohibition of gambling on loss by maritime perils.

1.—(1) If—

(*a*) any person effects a contract of marine insurance without having any bonâ fide interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a *bona fide* expectation of acquiring such an interest; or

(*b*) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term,

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months or to a fine not exceeding one hundred pounds, and in either case to forfeit to the Crown any money he may receive under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties if he acted knowing that the contract

was by way of gambling on loss by maritime perils within the meaning of this Act.

(3) Proceedings under this Act shall not be instituted without the consent in England of the Attorney-General, in Scotland of the Lord Advocate, and in Ireland of the Attorney-General for Ireland.

(4) Proceedings shall not be instituted under this Act against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this Act.

(5) If proceedings under this Act are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made, for effecting such a contract, and the contract was made " interest or no interest," or " without further proof of interest than the policy itself," or " without benefit of salvage to the insurer," or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

(6) For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

(7) Any person aggrieved by an order or decision of a court of summary jurisdiction under this Act, may appeal to quarter sessions.

(8) For the purposes of this Act the expression " owner " includes charterer.

(9) Subsection (7) of this section shall not apply to Scotland.

Short title. 6 Edw. 7. c. 41.

2. This Act may be cited as the Marine Insurance (Gambling Policies) Act, 1909, and the Marine Insurance Act, 1906, and this Act may be cited together as the Marine Insurance Acts, 1906 and 1909.

APPENDIX C

THE STAMP ACT, 1891

POLICIES OF SEA INSURANCE

92. (1) FOR the purpose of this act the expression "policy of sea insurance" means any insurance (including reinsurance) made upon any ship or vessel, or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to any ship or vessel, and includes any insurance of goods, merchandise, or property for any transit which includes not only a sea risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.

(2) Where any person in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss, or damage, such agreement or engagement shall be deemed to be a contract for sea insurance.

93. (1) A contract for sea insurance (other than such insurance as is referred to in the 55th section of the Merchant Shipping Act Amendment Act, 1862) shall not be valid unless the same is expressed in a policy of sea insurance.

(2) No policy of sea insurance made for time shall be made for any time exceeding twelve months (*but see Finance Act*, 1901, *with reference to continuation clause; also Revenue Act*, 1903, *with reference to vessels under construction*) *both these points have received attention in the chapter on the ship.*

(3) A policy of sea insurance shall not be valid unless it specifies the particular risk or adventure, the names of the subscribers or underwriters, and the sum or sums insured, and is made for a period not exceeding twelve months.

94. Where any sea insurance is made for a voyage and also for a time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy is to be charged with duty as a policy for a voyage, and also with duty as a policy for time.

95. (1) A policy of sea insurance may not be stamped at any time after it is signed or underwritten by any person, except in the two cases following; that is to say

(*a*) Any policy of mutual insurance having a stamp impressed thereon may, if required, be stamped with an additional stamp, provided that at the time when the additional stamp

is required the policy has not been signed or underwritten to an amount exceeding the sum or sums which the duty impressed thereon extends to cover;

(*b*) Any policy made or executed out of, but being in any manner enforceable within, the United Kingdom, may be stamped at any time within ten days after it has been first received in the United Kingdom on payment of the duty only.

(2) Provided that a policy of sea insurance shall for the purpose of production in evidence be an instrument which may legally be stamped after the execution thereof, and the penalty payable by law, on stamping the same shall be the sum of one hundred pounds.

96. Nothing in this Act shall prohibit the making of any alteration which may lawfully be made in the terms and conditions of any policy of sea insurance after the policy has been underwritten, provided that the alteration be made before notice of the determination of the risk originally insured and that it do not prolong the time covered by the insurance thereby made beyond the period of six months in the case of a policy made for a less period than six months or beyond the period of twelve months in the case of a policy made for a greater period than six months, and that the articles insured remain the property of the same person or persons, and that no additional or further sum be insured by reason or means of the alteration.

97. (1) If any person—

(*a*) Becomes an assurer upon any sea insurance, or enters into any contract for sea insurance or directly or indirectly receives or contracts or takes credit in account for any premium or consideration for any sea insurance, or knowingly takes upon himself any risk, or renders himself liable to pay, or pays, any sum of money upon any loss, peril, or contingency relative to any sea insurance, unless the insurance is expressed in a policy of sea insurance duly stamped; or

(*b*) Makes or effects, or knowingly procures to be made or effected, any sea insurance, or directly or indirectly gives or pays, or renders himself liable to pay, any premium or consideration for any sea insurance or enters into any contract for sea insurance, unless the insurance is expressed in a policy of sea insurance duly stamped; or

(*c*) Is concerned in any fraudulent contrivance or device, or is guilty of any wilful act, neglect, or omission, with intent to evade the duties payable on policies of sea insurance, or whereby the duties may be evaded, he shall for every such offence incur a fine of one hundred pounds.

(2) Every broker, agent, or other person negotiating or transacting any sea insurance contrary to the true intent and meaning of this Act, or writing any policy of sea insurance upon material not duly stamped, shall for every such offence incur a fine of one hundred pounds, and shall not have any legal claim to any charge for brokerage, commission, or agency, or for any money expended or paid by him with reference to the insurance, and any money paid to him in respect of any such charge shall be deemed to be paid without consideration, and shall remain the property of his employer.

(3) If any person makes or issues, or causes to be made or issued, any document purporting to be a copy of a policy of sea insurance, and there is not at the time of the making or issue in existence a policy duly stamped whereof the said document is a copy, he shall for such offence, in addition to any other fine or penalty to which he may be liable, incur a fine of one hundred pounds.

SCHEDULE

SEA INSURANCE POLICIES—STAMP DUTIES FROM 1ST SEPTEMBER, 1920

VOYAGE POLICIES

	s.	d.
Where the sum insured does not exceed £250	–	3
Where the sum insured exceeds £250 but does not exceed £500	–	6
Where the sum insured exceeds £500 but does not exceed £750	–	9
Where the sum insured exceeds £750 but does not exceed £1,000	1	–
Where the sum insured exceeds £1,000 for every £500 or fractional part of £500	–	6

TIME POLICIES

	A. s.	*A.* d.	*B.* s.	*B.* d.
Where the sum insured does not exceed £250	–	9	1	6
Where the sum insured exceeds £250 but does not exceed £500	1	6	3	–
Where the sum insured exceeds £500 but does not exceed £750	2	3	4	6
Where the sum insured exceeds £750 but does not exceed £1,000	3	–	6	–
Where the sum insured exceeds £1,000, for every £500 or fractional part of £500	1	6	3	–

A.—For periods not exceeding six months.

B.—For periods in excess of six months, but not exceeding twelve months.

On all Sea Policies where the premium does not exceed 2s. 6d. per cent the sum insured: Stamp Duty, 1d.

NON-MARINE POLICIES

On all policies of insurance against fire, burglary, accident, sickness, indemnity, employers' liability, etc.: Stamp Duty, 6d.

APPENDIX D

York-Antwerp Rules, 1924

Rule A

There is a General Average Act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule B

General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

Rule C

Only such damages, losses or expenses which are the direct consequence of the General Average Act shall be allowed as general average.

Damage or loss sustained by the ship or cargo through delay on the voyage, and indirect loss from the same cause, such as demurrage and loss of market, shall not be admitted as general average.

Rule D

Rights to contribution in general average shall not be affected though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such fault.

Rule E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Rule F

Any extra expense incurred in place of another expense which would have been allowable as general average, shall be deemed to be general average and so allowed, but only up to the amount of the general average expense avoided.

Rule G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

Rule I.—Jettison of Cargo

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognized custom of the trade.

Rule II.—Damage by Jettison and Sacrifice for the Common Safety

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

Rule III.—Extinguishing Fire on Shipboard

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

Rule IV.—Cutting away Wreck

Loss or damage caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

Rule V.—Voluntary Stranding

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average. But in all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

Rule VI.—Carrying Press of Sail—Damage to or Loss of Sails

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo, and freight, or any of them, by carrying a press of sail, shall be made good as general average.

Rule VII.—Damage to Engines in Refloating a Ship

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril. in endeavouring to refloat, shall be allowed in general average, when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage ; but where a ship is afloat no loss or damage caused by working the machinery and boilers shall be made good as general average.

Rule VIII.—Expenses Lightening a Ship when Ashore, and Consequent Damage

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a General Average Act, the extra cost of lightening, lighter hire and re-shipping (if incurred) and the loss or damage sustained thereby shall be admitted as general average.

Rule IX.—Ship's Materials and Stores Burnt for Fuel

Ship's materials, and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided ; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving shall be credited to the general average.

Rule X (a).—Expenses at Port of Refuge, etc.

When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading, in consequence of accident, sacrifice, or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average ; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

Rule X (b)

The cost of handling on board or discharging cargo, fuel or stores, whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage

Rule X (c)

Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including fire insurance, if incurred) on such cargo, fuel or stores shall

likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to the date of completion of discharge.

Rule X (d)

If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment, and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Rule XI.—Wages and Maintenance of Crew in Port of Refuge, etc.

When a ship shall have entered or been detained in any port or place under the circumstances, or for the purposes of repairs mentioned in Rule X, the wages payable to the Master, Officers and Crew together with the cost of maintenance of the same, during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as general average. But when the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the Master, Officers, and Crew, incurred after the date of the ship's condemnation or of the abandonment of the voyage, shall not be admitted as general average.

In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, wages and maintenance of crew, as above, shall be admitted as general average up to the date of completion of discharge.

Rule XII.—Damage to Cargo in Discharging, etc

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

Rule XIII.—Deductions from Cost of Repairs

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of "new for old," viz :—

In the case of iron or steel ships, from date of original register to the date of accident—

Up to 1 Year Old (A).	All repairs to be allowed in full, except painting or coating of bottom, from which one-third is to be deducted.
Between 1 and 3 Years (B).	One-third to be deducted off repairs to and renewals of Woodwork of Hull, Masts and Spars, Furniture, Upholstery, Crockery, Metal and Glassware also Sails, Rigging, Ropes, Sheets and Hawsers (other than wire and chain), Awnings, Covers and Painting. One-sixth to be deducted off Wire Rigging, Wire Ropes and Wire Hawsers, Wireless Apparatus, Chain Cables and Chains, Insulation, Donkey Engines, Steam Steering Gear and connections, Steam Winches and connections, Steam Cranes and connections, and Electrical Machinery; other repairs in full.
Between 3 and 6 Years (C).	Deductions as above under Clause B, except that one-third be deducted off Insulation, and one-sixth be deducted off Ironwork of Masts and Spars, and all Machinery (inclusive of Boilers and their Mountings).
Between 6 and 10 Years (D).	Deductions as above under Clause C, except that one-third be deducted off Ironwork of Masts and Spars, Donkey Engines, Steam Steering Gear, Winches, Cranes and connections, repairs to and renewal of all Machinery (inclusive of Boilers and their Mountings), Wireless Apparatus and all Hawsers, Ropes, Sheets and Rigging.
Between 10 and 15 Years (E).	One-third to be deducted off all repairs and renewals except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted. Anchors to be allowed in full.
Over 15 Years (F).	One-third to be deducted off all repairs and renewals. Anchors to be allowed in full. One-sixth to be deducted off chain cables.
Generally (G).	The deductions (except as to Provisions and Stores, Insulation, Wireless Apparatus, Machinery and Boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply. No painting bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident. No deduction to be made in respect of old material which is repaired without being replaced by new, and Provisions, Stores and Gear which have not been in use.

In the case of wooden or composite ships—

When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made, with the following exceptions—

Anchors shall be allowed in full. Chain cables shall be subject to a deduction of one-sixth only.

No deduction shall be made in respect of provisions and stores which had not been in use.

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labour metalling are subject to a deduction of one-third.

When a ship is fitted with propelling, refrigerating, electrical, or other machinery, or with insulation, or with wireless apparatus, repairs to such machinery, insulation or wireless apparatus to be subject to the same deductions as in the case of iron or steel ships.

In the case of ships generally—

In the case of all ships, the expense of straightening bent ironwork, including labour of taking out and replacing it, shall be allowed in full.

Graving dock dues, including expenses of removals, cartage, use of shears, stages, and graving dock materials, shall be allowed in full.

Rule XIV.—Temporary Repairs

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average; but where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average only up to the saving in expense which would have been incurred and allowed in general average had such repairs not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

Rule XV.—Loss of Freight

Loss of Freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a General Average Act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

Rule XVI.—Amount to be Made Good for Cargo Lost or Damaged by Sacrifice

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the date of the arrival of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Where goods so damaged are sold after arrival, the loss to be made

good in general average shall be calculated by applying to the sound value on the date of arrival of the vessel the percentage of loss resulting from a comparison of the proceeds with the sound value on date of sale.

Rule XVII.—Contributory Values

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure to which values shall be added the amount made good as general average for property sacrificed if not already included ; deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the General Average Act and have not been allowed as general average ; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the General Average Act, except such charges as are allowed in general average.

Passengers' luggage and personal effects not shipped under Bill of Lading shall not contribute in general average.

Rule XVIII.—Damage to Ship

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, deductions being made as above (Rule XIII) when old material is replaced by new. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a General Average Act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

Rule XIX.—Undeclared or Wrongfully Declared Cargo

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

Rule XX.—Expenses Bearing Up for Port, etc.

Fuel and stores consumed, and wages and maintenance of Master, Officers and Crew incurred, during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a).

Fuel and stores consumed during extra detention in a port or place of loading, call or refuge shall also be allowed in general average for the

period during which wages and maintenance of Master, Officers and Crew are allowed in terms of Rule XI, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Rule XXI.—Provision of Funds

A commission of 2 per cent on general average disbursements shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

Rule XXII.—Interest on Losses Made Good in General Average

Interest shall be allowed on expenditure, sacrifices and allowances charges to general average at the legal rate per annum prevailing at the final port of destination at which the adventure ends, or where there is no recognized legal rate, at the rate of 5 per cent per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

Rule XXIII.—Treatment of Cash Deposits

Where cash deposits have been collected in respect of Cargo's liability for General Average, Salvage or Special Charges, such Deposits shall be paid into a special account, earning interest where possible, in the joint names of two Trustees (one to be nominated on behalf of the Shipowner and the other on behalf of the Depositors) in a Bank to be approved by such Trustees. The sum so deposited, together with accrued interest, if any, shall be held as security for and upon trust for payment to the parties entitled thereto of the General Average, Salvage or Special Charges payable by the cargo in respect of which the deposits have been collected. The Trustees shall have power to make payments on account or refunds of deposits which may be certified to in writing by the Average Adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

APPENDIX E

Rules of Practice of the Association of Average Adjusters

RULES OF PRACTICE—*contd.*

RULES OF PRACTICE—*contd.*

RULES OF PRACTICE—*contd.*

RULES OF PRACTICE—*contd.*

RULES OF PRACTICE—*contd.*

THE FOLLOWING ARE THE

RULES OF PRACTICE

ADOPTED BY THE ASSOCIATION UP TO THE PRESENT TIME

NOTE.—Some of the undermentioned Rules are, as indicated, "Customs of Lloyd's," now by resolution of the Association incorporated amongst the Rules of Practice. The history of the collection of the "Customs of Lloyd's" by a Special Committee of the Association and of their final incorporation as stated, appears in the Annual Reports of the Association. The following is an Index of the References to the "Customs" in the said Reports, viz.—

THE CUSTOMS OF LLOYD'S

Appointment of a Committee to Collect . . . . 1873 p. 20
Report of Committee, considered . . . . 1874 p. 23
Report of Committee, further considered . . . 1875 p. 22
and 1876 p. 12

Resolution—"That the Report on the 'Customs of Lloyd's' as now amended be adopted, and reprinted for the use of the Association" . . . . . 1876 p. 21

The preamble to the Customs was—

> "Nothing can be called a 'Custom of Lloyd's' which is determined by a decision of the superior Courts; for whatever is thus sanctioned rests on a ground surer than Custom. A 'Custom of Lloyd's' then must relate to a point on which the law is doubtful, or not yet defined, but as to which, for practical convenience, it is necessary that there should be some uniform rule. By the term is here understood the Customs of English Adjusting, whether as affecting General or Particular Average."

Resolution—"That the 'Customs of Lloyd's,' after having been sanctioned by a two-thirds vote of the Association, shall be deemed to have the same force as a Rule of the Association" . . . . . 1877 p. 79
and 1878 p. 18

Resolution—"That the 'Custom of Lloyd's' as collected by this Association be now confirmed" . . . 1879 p. 21

Proposed—"That it be left to the Committee of Management to consider the 'Custom of Lloyd's' as adopted by the Association as Rules of Practice, and to delete such rules, or parts of rules, as have been affected by legal decisions, and to report to the next General Meeting" . 1889 p. 49
Report of the Committee accepted . . . . 1890 p. 33
Adoption of Alterations recommended by Committee . 1890 p. 35
and 1891 pp. 32–34

1 *Adjustments "for the Consideration of Underwriters"*

(Proposed and Accepted 1894. Confirmed 1895.)

That any adjustment prepared for the consideration of underwriters shall include a statement of the reasons of the average adjuster for making such adjustment, and, when submitted in conjunction with a claim for which underwriters are liable, shall be contained in an entirely separate document. To such adjustments the following note shall be appended, viz.—

"This adjustment has been prepared by request, to enable the assured to submit the case to underwriters."

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2 *Interest and Commission for Advancing Funds*

(Proposed and Accepted 1906. Confirmed 1907.)

That, in practice, interest and commission for advancing funds are only allowable in average when, proper and necessary steps having been taken to make a collection on account, an out-of-pocket expense for interest and/or commission for advancing funds is reasonably incurred.

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3 *Agency Commission and Agency*

(Proposed and Accepted 1906. Confirmed 1907.)

That, in practice, neither commission (excepting bank commission) nor any charge by way of agency or remuneration for trouble is allowed to the shipowner in average, except in respect of services rendered on behalf of cargo when such services are not involved in the contract of affreightment.

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4 *Duty of Adjusters in respect of Cost of Repairs*

(Proposed and Accepted 1879. Confirmed 1880.)

That in adjusting particular average on ship or general average which includes repairs, it is the duty of the adjuster to satisfy himself that such reasonable and usual precautions have been taken to keep down the cost of repairs as a prudent shipowner would have taken if uninsured.

5 *Claims for Damage to Ship's Machinery*

(Proposed and Accepted 1880. Confirmed 1881.)

That no claim for damage to ship's machinery shall be admitted into an adjustment unless a survey has been held upon such machinery by competent and disinterested engineers as soon as practicable after the occurrence of the casualty giving rise to the claim ; a certificate of such survey, reporting as to the nature and cause of the damage, to be furnished to the adjuster ; or unless clear proof be given to the adjuster that the holding of such survey or the obtaining of such certificate is impracticable, which proof is to be set forth on the face of the adjustment.

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6 *Claims on Ship's Machinery*

(Proposed and Accepted 1890. Confirmed 1891.)

That in all claims on ship's machinery for repairs, no claim for a new propeller or new shaft shall be admitted into an adjustment, unless the adjuster shall obtain and insert into his statement evidence showing what has become of the old propeller or shaft.

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7 *Water Casks (Custom of Lloyd's,* 1876)

Water casks or tanks carried on a ship's deck are not paid for by underwriters as general or particular average ; nor are warps or other articles when improperly carried on deck.

GENERAL AVERAGE—

8 *Basis of Adjustment*

(Proposed and Accepted 1889. Confirmed 1890.)

(Addition Proposed and Accepted 1899. Confirmed 1900.)

That in any adjustment of general average not made in accordance with British Law it shall be prefaced on what principle or according to what law the adjustment has been made, and the reason for so adjusting the claim shall be set forth.

In all cases the adjuster shall give particulars in a prominent position in the average statement of the clause or clauses contained in the charter-party and/or bills of lading with reference to the adjustment of general average.

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9 *Deckload Jettison (Custom of Lloyd's, Amended,* 1890–91)

The jettison of a deckload carried according to the usage of trade and not in violation of the contracts of affreightment is general average.

There is an exception to this rule in the case of cargoes of cotton, tallow, acids, and some other goods.

In lieu of—(*Custom of Lloyd's*, 1876)

The general rule of law now is that the jettison of a deckload, carried by consent of the shipper, is general average, as between the parties who have assented to this mode of stowage. The exceptions are those trades in which there is a custom that the jettison shall be at the risk of the shipper or owner of the deckload.

Such customs may, perhaps, though not very correctly, be called "Customs of Lloyd's."

This custom exists with cargoes of cotton, tallow, acids, and some other goods.

GENERAL AVERAGE—

10 *Damage by Water used to Extinguish Fire*

(Proposed and Accepted 1873. Confirmed 1874.)

That damage done by water poured down a ship's hold to extinguish a fire be treated as general average.

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11 *Damage caused by Water thrown upon Burning Goods*

(Proposed and Accepted 1874. Confirmed 1875.)

That goods in a ship which is on fire, or the cargo of which is on fire, affected by water voluntarily used to extinguish such fire, shall not be the subject of general average if the packages so affected be themselves on fire at the time the water was thrown upon them.

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12 *Voluntary Stranding* (*Custom of Lloyd's*, 1876)

The Custom of Lloyd's excludes from general average all damage to ship or cargo resulting from a voluntary stranding.

This rule does not necessarily exclude such damage as is done by beaching or scuttling a burning vessel to extinguish the fire.

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13 *Expenses Lightening a Ship when Ashore* (*Custom of Lloyd's, Amended*, 1890–91)

When a ship is ashore, and, in order to float her, cargo is put into lighters, and is then at once re-shipped, the whole cost of lightering, including lighter hire, and re-shipping, is general average.

In lieu of the following, formerly succeeding Section (f) in "Expenses at Port of Refuge":

The above rules do not apply to the cost of lightening a ship when ashore, in case the cargo is put into lighters in order to float the ship, and is then at once re-shipped. In such cases, the whole cost of lightening, including that of re-shipping, is general average.

GENERAL AVERAGE—

14 *Sails set to force a Ship off the Ground* (*Custom of Lloyd's*, 1876)

Sails damaged by being set, or kept set, to force a ship off the ground or to drive her higher up the ground for the common safety, are general average.

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15 *Stranded Vessels : Damage to Engines in getting off*

(Proposed and Accepted 1890. Confirmed 1891.)
(Amended 1906. Confirmed 1907.)

That damage caused to machinery and boilers of a stranded vessel, in endeavouring to refloat for the common safety, when the interests are in peril, be allowed in general average.

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16 *Claims arising out of Deficiency of Fuel*

(Proposed and Accepted 1899. Confirmed 1900.)

That in adjusting general average arising out of deficiency of fuel the facts on which the general average is based shall be set forth in the adjustment, including the material dates and distances, and particulars of fuel supplies and consumption.

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17 *Resort to Port of Refuge for General Average Repairs Treatment of the Charges incurred*

(Proposed and Accepted 1888. Confirmed 1889.)

That when a ship puts into a port of refuge in consequence of damage which is itself the subject of general average, and sails thence with her original cargo, or a part of it, the outward as well as the inward port charges shall be treated as general average ; and when cargo is discharged for the purpose of repairing such damage, the warehouse rent and re-loading of the same shall, as well as the discharge, be treated as general average. (See *Attwood* v. *Sellar*.)

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18 *Resort to Port of Refuge on Account of Particular Average Repairs : Treatment of the Charges incurred*

(Proposed and Accepted 1888. Confirmed 1889.)

That when a ship puts into a port of refuge in consequence of damage which is itself the subject of particular average (or not of general average), and when the cargo has been discharged in consequence of such damage, the inward port charges and the cost of discharging the cargo shall be general average, the warehouse rent of cargo shall be a particular charge on cargo, and the cost of reloading and outward port charges shall be a particular charge on freight. (See *Svendsen* v. *Wallace*.)

GENERAL AVERAGE—

19 *Treatment of Costs of Storage and Re-loading at Port of Refuge*

(Proposed and Accepted 1886. Confirmed 1887.)

That when the cargo is discharged for the purpose of repairing, re-conditioning, or diminishing damage to ship or cargo which is itself the subject of general average, the cost of storage on it and of re-loading it shall be treated as general average, equally with the cost of discharging it.

19A *Fire Insurance on Cargo Discharged under Average*

(Proposed and Accepted 1924. Confirmed 1925.)

That in practice, where the cost of fire insurance has been reasonably incurred by the shipowner, or his agents, on cargo discharged under average, such cost shall be treated as part of the cost of storage.

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20 *Expenses at a Port of Refuge* (*Custom of Lloyd's, Amended*, 1890–91)

When a ship puts into a port of refuge on account of accident and not in consequence of damage which is itself the subject of general average, then, on the assumption that the ship was seaworthy at the commencement of the voyage, the Custom of Lloyd's is as follows—

1876 (*a*) All cost of towage, pilotage, harbour dues, and other extraordinary expenses incurred in order to bring the ship and cargo into a place of safety, are general average. Under the term "extraordinary expenses" are not included wages or victuals of crew, coals, or engine stores, or demurrage.

1876 (*b*) The cost of discharging the cargo, whether for the common safety, or to repair the ship, together with the cost of conveying it to the warehouse, is general average.

The cost of discharging the cargo on account of damage to it resulting from its own *vice propre*, is chargeable to the owners of the cargo.

1876 (*c*) The warehouse rent, or other expenses which take the place of warehouse rent, of the cargo when so discharged, is, except as under, a special charge on the cargo.

1876 (*d*) The cost of re-loading the cargo, and the outward port charges incurred through leaving the port of refuge, are, when the discharge of cargo falls in general average, a special charge on freight.

1876 (*e*) The expenses referred to in Clause (*d*) are charged to the party who runs the risk of freight—that is, wholly to the charterer—if the whole freight has been prepaid; and, if part only, then in the proportion which the part prepaid bears to the whole freight.

GENERAL AVERAGE—

(*f*) When the cargo, instead of being sent ashore, is placed on board hulk or lighters during the ship's stay in port, the hulk-hire is divided between general average, cargo, and freight, in such proportions as may place the several contributing interests in nearly the same relative positions as if the cargo had been landed and stored.

The amendment is in the preamble, which formerly read thus—

When a ship puts into a port of refuge on account of accident or sacrifice, then, on the assumption that the ship was seaworthy at the commencement of the voyage, the Custom of Lloyd's is as follows—

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21 *Treatment of Costs of Extraordinary Discharge*

(Proposed and Accepted 1886. Confirmed 1887.)

That no distinction be drawn in practice between discharging cargo for the common safety of ship and cargo, and discharging it for the purpose of effecting at an intermediate port or ports of refuge repairs necessary for the prosecution of the voyage.

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22 *Towage from a Port of Refuge*

(Proposed and Accepted 1876. Confirmed 1877.)

That if a ship be in a port of refuge at which it is practicable to repair her, and if, in order to save expense, she be towed thence to some other port, then the extra cost of such towage shall be divided in proportion to the saving of expense thereby occasioned to the several parties to the adventure.

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23 *Cargo forwarded from a Port of Refuge*

(Proposed and Accepted 1876. Confirmed 1877.)

That if a ship be in a port of refuge at which it is practicable to repair her so as to enable her to carry on the whole cargo, but, in order to save expense, the cargo, or a portion of it, be transhipped by another vessel, or otherwise forwarded, then the cost of such transhipment (up to the amount of expense saved) shall be divided in proportion to the saving of expense thereby occasioned to the several parties to the adventure.

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24 *Cargo Sold at a Port of Refuge*

(Proposed and Accepted 1902. Confirmed 1903.)

That if a ship be in a port of refuge at which it is practicable to repair her so as to enable her to carry on the whole cargo, or such portion of it as is fit to be carried on, but, in order to save expense, the cargo, or a portion of it, be, with the consent of the owners of such

GENERAL AVERAGE—

cargo, sold at the port of refuge, then the loss by sale including loss of freight on cargo so sold (up to the amount of expense saved) shall be divided in proportion to the saving of expense thereby occasioned to the several parties to the adventure; provided always that the amount so divided shall in no case exceed the cost of transhipment and/or forwarding referred to in the preceding rule of the Association.

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25 *Interpretation of the Rule respecting Substituted Expenses*

(Proposed and Accepted 1877. Confirmed 1878.)

That for the purpose of avoiding any misinterpretation of the resolution relating to the apportionment of substituted expenses, it is declared that the saving of expense therein mentioned is limited to a saving or reduction of the actual outlay, including crew's wages and provisions, if any, which would have been incurred at the port of refuge, if the vessel had been repaired there, and does not include supposed losses or expenses, such as interest, loss of market, demurrage, or assumed damage by discharging.

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26 *Damage caused to Cargo during Forced Discharge*

(Proposed and Accepted 1883. Confirmed 1884.)

That whenever the cost of discharging cargo is general average, all loss or damage necessarily arising to cargo therefrom shall be allowed in general average.

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27 *Treatment of Damage to Cargo caused by Discharge, Storing, and Re-loading*

(Proposed and Accepted 1886. Confirmed 1887.)

The damage necessarily done to cargo by discharging, storing, and re-loading it, be treated as general average when, and only when, the cost of those measures respectively is so treated.

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28 *Deductions from Cost of Repairs in adjusting General Average*

(Proposed and Accepted 1887. Confirmed 1888.)

(Amended 1934. Confirmed 1935.)

That in adjusting claims for general average, repairs to be allowed

GENERAL AVERAGE—

in general average shall be subject to the following deductions in respect of "new for old," viz.—

In the case of iron or steel ships, from date of original register to the date of accident—

UP TO 1 YEAR OLD (A.)	All repairs to be allowed in full, except painting or coating of bottom, from which one-third is to be deducted.
BETWEEN 1 AND 3 YEARS (B.)	One-third to be deducted off repairs to and renewals of woodwork of hull, masts and spars, furniture, upholstery, crockery, metal and glass-ware, also sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, and painting. One-sixth to be deducted off wire rigging, wire ropes and wire hawsers, wireless apparatus, chain cables and chains, insulation, donkey engines, steam steering gear and connections, steam winches and connections, steam cranes and connections and electrical machinery; other repairs in full.
BETWEEN 3 AND 6 YEARS (C.)	Deductions as above under Clause (B), except that one-third be deducted off insulation, and one-sixth be deducted off ironwork of masts and spars, and all machinery (inclusive of boilers and their mountings).
BETWEEN 6 AND 10 YEARS (D.)	Deductions as above under Clause (C), except that one-third be deducted off ironwork of masts and spars, donkey engines, steam steering gear, winches, cranes and connections, repairs to and renewal of all machinery (inclusive of boilers and their mountings), wireless apparatus and all hawsers, ropes, sheets and rigging.
BETWEEN 10 AND 15 YEARS (E.)	One-third to be deducted off all repairs and renewals except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted. Anchors to be allowed in full.
Over 15 YEARS (F.)	One-third to be deducted off all repairs and renewals. Anchors to be allowed in full. One-sixth to be deducted off chain cables.
GENERALLY (G.)	The deductions (except as to provisions and stores, insulation, wireless apparatus, machinery and boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply. No painting bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident. No deduction to be made in respect of old material which is repaired without being replaced by new, and provisions, stores and gear which have not been in use.

GENERAL AVERAGE—

In the case of wooden or composite ships—

When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made, with the following exceptions—

Anchors shall be allowed in full. Chain cables shall be subject to a deduction of one-sixth only.

No deduction shall be made in respect of provisions and stores which had not been in use.

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labour metalling are subject to a deduction of one-third.

When a ship is fitted with propelling, refrigerating, electrical, or other machinery or with insulation, or with wireless apparatus, repairs to such machinery, insulation or wireless apparatus to be subject to the same deductions as in the case of iron or steel ships.

In the case of ships generally—

In the case of all ships, the expense of straightening bent ironwork, including labour of taking out and replacing it, shall be allowed in full.

Graving dock dues, including expenses of removals, cartage, use of shears, stages, and graving dock materials, shall be allowed in full.

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29 *Freight Sacrificed: Amount to be made Good in General Average*

(Proposed and Accepted 1894. Confirmed 1895.)

That the loss of freight to be made good in general average shall be ascertained by deducting from the amount of gross freight lost the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

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30 *Basis of Contribution to General Average*

(Original Rule of Practice, 1873.)

When property saved by a general average act is injured or destroyed by subsequent accident, the contributing value of that property to a general average which is less than the total contributing value, shall, when it does not reach the port of destination, be its actual net proceeds; when it does, it shall be its actual net value at the port of destination on its delivery there ; and in all cases any values allowed in general average shall be added to and form part of the contributing value as above.

The above rule shall not apply to adjustments made before the adventure has terminated.

GENERAL AVERAGE—

31 *Contributory Value of Ship*

(Proposed and Accepted 1899. Confirmed 1900.)

That in any adjustment of general average there shall be set forth the certificate on which the contributory value of the ship is based, or, if there be no such certificate, the information adopted in lieu thereof and any amount made good shall be specified.

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32 *Contributory Value of Freight*

(Original Rule of Practice, 1873.)

That freight at the risk of the shipowner shall contribute to general average upon its gross amount, deducting the whole of, and no more than, such port charges as the shipowner shall incur after the date of the general average act, and such wages of the crew as the shipowner shall become liable for after that date.

(Proposed and Accepted 1899. Confirmed 1900.)

That in any adjustment of general average there shall be set forth the amount of the gross freight and the freight advanced, if any; also the port charges and wages deducted, and any amount made good.

33 *Vessel in Ballast and under Charter : Contributing Interests*

(Confirmed 1927.)

When a vessel is in ballast and under charter the interests contributing to general average are, for the purpose of ascertaining the liability of underwriters on British policies of insurance on the vessel and/or freight, the vefsel and the shipowners' freight earned under the charter computed in the usual way after deduction of contingent expenses subsequent to the General Average Act. The place where the adventure shall be deemed to terminate and at which the values for contribution to general average shall be calculated is, in the case of a voyage charter, the final port of discharge of the cargo carried under the charter, and in the case of a time charter, the first port of discharge at which the vessel arrives after the General Average Act, unless a prior termination of the adventure be brought about either by the loss of the vessel and freight, or either of them or by the cancelment of the charter through the exercise by the charterers of an option contained therein.

When the charter provides for York/Antwerp Rules, the general average shall be adjusted in accordance with those Rules and British Law and Practice, and without regard to the law and practice of any foreign port at which the adventure may terminate, and in the interpretation of Rule XI it shall be immaterial whether the extra period of detention takes place at a port of loading, call or refuge, provided that the deterntion is in consequence of accident, sacrifice, or other extraordinary circumstance occurring whilst the vessel is in ballast.

GENERAL AVERAGE—

34 *Chartered Freight (Ulterior) : Contribution to General Average*

(Proposed and Accepted 1891. Confirmed 1892.)

That when at the time of a general average act the vessel has on board cargo shipped under charter-party or bills of lading, and is also under a separate charter to load another cargo after the cargo then in course of carriage has been discharged, the ulterior chartered freight shall not contribute to the general average.

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35 *Deductions from Freight at Charterer's Risk*

(Original Rule of Practice, 1873.)

That freight at the risk of the charterer shall be subject to no deduction for wages and port charges, except in the case of charters in which the wages or port charges are payable by the charterer, in which case such freight shall be governed by the same rule as freight at the risk of the shipowner.

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36 *Forwarding Charges on Advanced Freight*

(Original Rule of Practice, 1873.)

That in case of wreck, the cargo being forwarded to its destination, the charterer, who has paid a lump sum on account of freight, which is not to be returned in the event of the vessel being lost, shall not be liable for any portion of the forwarding freight and charges, when the same are less than the balance of freight payable to the shipowner at the port of destination under the original charter-party.

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37 *Adjustment : Policies of Insurance and Names of Underwriters*

(Proposed and Accepted 1889. Confirmed 1890.)

That no statement shall be drawn up showing the amount of payments by or to the underwriters, excluding statements of particular average on ship now dealt with by rule of the Association, unless the policies, or copies of policies of insurance, or certificates of insurance, for which the statement is required, be produced to the adjusters ; and that such statement shall give the names of the underwriting firms and companies interested, and the amounts due on the respective policies produced.

GENERAL AVERAGE—

38 *Sacrifice for the Common Safety : Direct Liability of Underwriters*

(Proposed and Accepted 1890. Confirmed 1891.)

That in case of general average sacrifice there is, under ordinary policies of insurance, a direct liability of an underwriter on ship for loss of or damage to ship's materials, and of an underwriter on goods or freight, for loss of or damage to goods or loss of freight so sacrificed as a general average loss ; that such loss not being particular average is not taken into account in computing the memorandum percentages, and that the direct liability of an underwriter for such loss is consequently unaffected by the memorandum or any other warranty respecting particular average.

38A *Sacrifice of Ship's Stores : Direct Liability of Underwriters*

(Proposed and Accepted 1921. Confirmed 1922.)

That underwriters insuring ship's stores, bunker coal, or fuel, destroyed or used as part of a general average operation, shall only be liable for those articles as a direct claim on the policy when they formed part of the property at risk at the time of the peril giving rise to the General Average Act.

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39 *Enforcement of General Average Lien by Shipowners*

(Proposed and Accepted 1890. Confirmed 1891.)

That in all cases where general average damage to ship is claimed direct from the underwriters on that interest, the average adjusters shall ascertain whether the shipowners have taken the necessary steps to enforce their lien for general average on the cargo, and shall insert in the average statement a note giving the result of their inquiries.

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40 *Underwriters' Liability (Custom of Lloyd's, 1876)*

If the ship or cargo be insured for more than its contributory value, the underwriter pays what is assessed on the contributory value. But where insured for less than the contributory value, the underwriter pays on the insured value ; and when there has been a particular average for damage which forms a deduction from the contributory value of the ship that must be deducted from the insured value to find upon what the underwriter contributes.

This rule does not apply to foreign adjustments, when the basis of contribution is something other than the net value of the thing insured.

(Proposed and Accepted 1922. Confirmed 1923.)

That in practice, in applying the above rule for the purpose of ascertaining the liability of underwriters for contribution to general

GENERAL AVERAGE—

average and salvage charges, deduction shall be made from the insured value of all losses and charges for which underwriters are liable and which have been deducted in arriving at the contributory value.

Addition to Rule of Practice No. 40 ; 12th November, 1926—

In adjusting the liability of underwriters on freight for general average contribution and salvage charges, effect shall be given to Section 73 of the Marine Insurance Act, 1906, by comparing the gross and not the net amount of freight at risk with the insured value in the case of a valued policy or the insurable value in the case of an unvalued policy.

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41 *The Duty of Adjusters in Cases involving Refunds of General Average Deposits or Apportionment of Salvage, Collision Recoveries, or other Funds*

(Proposed and Accepted 1896. Confirmed 1897.)

That in cases of general average where deposits have been collected and it is likely that repayments will have to be made, measures be taken by the adjuster to ascertain the names of underwriters who have reimbursed their assured in respect of such deposits ; that the names of any such underwriters be set forth in the adjustment as claimants of refund, if any, to which they are apparently entitled ; and that on completion of the adjustment, notice be sent to all underwriters whose names are so set forth as to any refund of which they appear as claimants and as to the steps to be taken in order to obtain payment of the same.

That in cases where the names of any underwriters are not to be ascertained on completion of the adjustment, notice be sent to the Secretary of Lloyd's, to the Institute of London Underwriters, to the Liverpool Underwriters' Association, and to the Association of Underwriters of Glasgow, notifying such interests as have not been appropriated to underwriters.

And that in cases of apportionment of salvage or other funds for distribution, similar measures be taken by the adjuster to safeguard the interests of any underwriters who may be entitled to benefit under the apportionment.

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42 *" Memorandum " to Statements showing Refunds in respect of General Average Deposits*

(Proposed and Accepted 1904. Confirmed 1905.)

That the following memorandum shall appear at the end of statements which show refunds to be due in respect of General Average Deposits, viz.—

> Memorandum—Refunds of General Average Deposits shown in this statement should only be paid on production of the " original " deposit receipts.

GENERAL AVERAGE—

42A *Interest on Deposits*

(Proposed and Accepted 1923. Confirmed 1924.)

That, unless otherwise expressly provided, the interest accrued on deposits on account of salvage and/or general average and/or particular and/or other charges, or on the balance of such deposits after payments on account, if any, have been made, shall be credited to the depositor or those to whom his rights in respect of the deposits have been transferred.

42B *Apportionment of Interest on Amounts Made Good*

(Proposed and Accepted 1925. Confirmed 1926.)

That in practice (in the absence of express agreement between the parties concerned) interest allowed on amounts made good shall be apportioned between assured and underwriters, taking into account the sums paid by underwriters and the dates when such payments were made, notwithstanding that by the addition of interest the underwriter may receive a larger sum than he has paid.

YORK-ANTWERP RULES—

43 *Modification of York-Antwerp Rules in Contracts of Affreightment Liability of Underwriters*

(Proposed and Accepted 1904. Confirmed 1905.)

That in all cases where the contract of affreightment provides for the application of York-Antwerp Rules in any modified or mutilated form, and when the policies of insurance provide for the application of York-Antwerp Rules, if in accordance with the contract of affreightment, in applying the claim to such policies no effect shall be given to York-Antwerp Rules.

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44 *Allowance to be made in General Average under York-Antwerp Rules in respect of the Cost of Maintenance of Officers and Crew*

(Proposed and Accepted 1896. Confirmed 1897.)
(Amended 1913.)

That the amount to be allowed in general average under York-Antwerp Rules for the maintenance of officers and crew shall be the actual cost of such maintenance where proved; but where proof of actual cost is not furnished to the adjuster, the allowance shall be determined by the undermentioned scale; provided that where evidence of cost is produced, but is not conclusive, the allowance shall repre-

YORK-ANTWERP RULES—

sent as nearly as possible the actual cost, but shall not exceed the undermentioned scale, viz.—

	OFFICERS[1] per man per day.	CREW[2] per man per day.
Passenger Steamers (Liners) . .	4/-	1/6
Passenger Sailing Vessels . .	3/-	1/6
Cargo Steamers and Sailing Vessels	2/6	1/6

Except that the allowance for Lascars shall be 9d. per man per day, and in the case of other Asiatic (native) crews shall be determined by the circumstances of each case.

[1] To include the master, deck officers, and engineers (in the case of a steamer), also the doctor and purser (if carried).

[2] To include the remainder of the ship's company.

44A *Salvage Services rendered under an Agreement*

(Proposed and Accepted May, 1942. Confirmed May, 1943.)

Expenses for salvage services rendered by or accepted under agreement shall in practice be treated as general average provided that such expenses were incurred for the common safety within the meaning of Rule "A" of the York-Antwerp Rules, 1924.

44B *Commission Allowed under Rule XXI*

(Proposed and Accepted 1933. Confirmed 1934.)

That the commission of 2 per cent allowed on general average disbursements under Rule XXI of York-Antwerp Rules, 1924, shall be credited in full to the party who has authorized the expenditure and is liable for payment, except that where the funds for payment are provided in the first instance in whole or in part from the deposit funds, or by other parties to the adventure, or by underwriters, the commission on such advances shall be credited to the deposit funds or to the parties or underwriters providing the funds for payment.

PARTICULAR AVERAGE ON SHIP—

45 *Statement of Particular Average on Ships*

(Proposed and Accepted 1874. Confirmed 1875.)

That claims for particular average on ships shall not be stated unless the policies or copies of policies of insurance, for claiming on which the statement is required, be produced to the adjusters.

(Proposed and Accepted 1874. Confirmed 1875.)

That such statements shall give the names of the underwriting firms and companies interested, and the amounts payable on the respective policies produced.

PARTICULAR AVERAGE ON SHIP—

46 *Apportionment of Costs in Collision Cases*

(Proposed and Accepted 1896. Confirmed 1897. Amended 1928.)

That when a vessel sustains and does damage by collision, and litigation consequently results for the purpose of testing liability, the technicality of the vessel having been plaintiff or defendant in the litigation shall not necessarily govern the apportionment of the costs of such litigation, which shall be apportioned between claim and counter-claim in proportion to the amount which has been or would have been allowed in respect of each in the event of the claim or counter-claim being established; provided that when a claim or counter-claim is made solely for the purpose of defence, and is not allowed, the costs apportioned thereto shall be treated as costs of defence.

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47 *Expenses of Removing a Vessel for Repair*

(Proposed and Accepted 1896. Confirmed 1897. Amended 1928.)

Where a vessel is in need of repair at any port, and is removed thence to some other port for the purpose of repairs, either because the repairs cannot be effected, or cannot be effected prudently—

(*a*) The necessary expenses incurred in moving the vessel to the port of repair shall be allowed as part of the cost of repair, and where the vessel after repairing forthwith returns to the port from which she was removed, the necessary expenses incurred in so returning shall also be allowed.

(*b*) Where by moving the vessel to the port of repair any new freight is earned, or any expenses are saved in relation to the current voyage of the vessel, such net earnings or savings shall be deducted from the expenses of moving her, and where the vessel loads a new cargo at the port of repair no expenses subsequent to the completion of repair shall be allowed.

The expenses of removal include the cost of temporary repair, ballasting, wages and provisions of crew and/or runners, pilotage, towage, extra marine insurance, port charges, fuel and engine-room stores.

(*c*) This rule shall not admit any ordinary expenses incurred in fulfilment of a contract of affreightment, though such expenses are increased by the removal to a port of repair.

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48 *Coals and Stores used in Repair of Damage to the Hull*

(Proposed and Accepted 1876. Confirmed 1877.)

That the cost of replacing coals and engine-room stores consumed either in the repair of damage to a steamer, in working the engines, or winches to assist in the repairs of damage, or in moving her to a place

PARTICULAR AVERAGE ON SHIP—

of repair within the limits of the port where she is lying, shall be charged to the underwriters on ship as particular average.

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49 *Rigging Chafed* (*Custom of Lloyd's*, 1876)

Rigging injured by straining or chafing is not charged to underwriters, unless such injury is caused by blows of the sea, grounding, or contact; or by displacement, through sea peril, of the spars, channels, bulwarks, or rails.

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50 *Sails Split or Blown Away* (*Custom of Lloyd's*, 1876)

Sails split by the wind, or blown away while set, unless occasioned by the ship's grounding or coming into collision, or in consequence of damage to the spars to which the sails are bent, are not charged to underwriters.

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51 *Scraping and Painting*

(Proposed and Accepted 1900. Confirmed 1901.)

That when in consequence of damage by a peril insured against, a vessel's bottom has to be scraped and painted, the cost of such scraping and painting shall be charged to underwriters on ship, without any deduction on account of the vessel having become due for ordinary painting at any time subsequent to the accident.

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52 *Dry Dock Expenses*

(Proposed and Accepted July, 1891. Confirmed 1892. Amended 13th May, 1927.)

That, in practice, where repairs on owner's account which are immediately necessary to make the vessel seaworthy and which can only be effected in dry dock are executed concurrently with other repairs, for the cost of which underwriters are liable, and which also can only be effected in dry dock, tne cost of entering and leaving the dry dock, in addition to so much of the dock dues as is common to both repairs, shall be divided equally between the shipowner and the underwriters, irrespective of the fact that the repairs for which underwriters are liable may relate to more than one voyage or accident or may be payable by more than one set of underwriters.

Sub-division between underwriters of the proportion of dry-docking expenses chargeable to them shall be made on the basis of voyages, and/or such other franchise units as are specified in the policies.

PARTICULAR AVERAGE ON SHIP—

In determining whether the franchise is reached the whole cost of dry-docking necessary for the repair of the damage, less the proportion (if any) chargeable to owners in terms of this Rule, shall be taken into consideration, notwithstanding that there are other damages to which a portion of the cost of dry-docking has to be apportioned in ascertaining the amount actually recoverable.

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53 *Deduction of One-Third* (*Custom of Lloyd's, Amended,* 1890–91)

(1876) The deduction for new work in place of old is fixed by custom at one-third, with the following exceptions—

Anchors are allowed in full. Chain cables are subject to one-sixth only.

Metal sheathing is dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labour metalling are subject to one-third.

The rule applies to iron as well as to wooden ships, and to labour as well as material. It does not apply to the expense of straightening bent ironwork, and to the labour of taking out and replacing it.

It does not apply to graving dock expenses and removals, cartages, use of shears, stages, and graving dock materials.

It does not apply to a ship's first voyage.

(1890-91) N.B.—Articles belonging to or repairs done to, a ship, other than an iron ship, allowed in general average, are subject to similar deductions in respect to new for old materials as are made in adjusting claims of particular average on ship.

In lieu of note to Custom of Lloyd's, 1876, *viz.* :

N.B.—Articles belonging to, or repairs done to, a ship, allowed in general average, are subject to similar deductions in respect to new for old materials as are made in adjusting claims of particular average on ship.

PARTICULAR AVERAGE ON GOODS—

54 *Adjustment on Bonded Prices* (*Custom of Lloyd's,* 1876)

In the following cases it is customary to adjust particular average on a comparison of bonded, instead of duty-paid prices:

In claims for damage to tea, tobacco, coffee, wine, and spirits imported into this country.

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55 *Adjustment of Average on Goods sold in Bond*

(Proposed and Accepted 1885. Confirmed 1886.)

That in consequence of the facilities generally offered to bond goods at their destination, at which terms they are often sold, the term " Gross

PARTICULAR AVERAGE ON GOODS—

Proceeds " shall, for the purpose of adjustment, be taken to mean the price at which the goods are sold to the consumer, after payment of freight and landing charges, but exclusive of Customs duty, in cases where it is the custom of the port to sell or deal with the goods in bond.

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56 *Apportionment of Insured Value of Goods*

(Proposed and Accepted 1885. Confirmed 1886.)

That where different qualities or descriptions of cargo are valued in the policy at a lump sum, such sum shall, for the purpose of adjusting claims, be apportioned on the invoice values where the invoice distinguishes the separate values of the said different qualities or descriptions; and over the net arrived sound values in all other cases.

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57 *Allowance for Water in Picked Cotton* (*Custom of Lloyd's*, 1876)

When bales of cotton are picked, and the pickings are sold wet, the allowance for water in the pickings (where there are no means of ascertaining it) is by custom fixed at one-third.

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58 *Allowance for Water in Cut Tobacco* (*Custom of Lloyd's*, 1876)

When damaged tobacco is cut off, the allowance for water in the cuttings is one-fourth.

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59 *Allowance for Water in Wool* (*Custom of Lloyd's*, 1876)

Damaged wool from Australia, New Zealand, and the Cape is subject to a deduction of 3 per cent for wet, if the actual increase cannot be ascertained.

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60 *Franchise Charges* (*Custom of Lloyd's*, 1876)

The expenses of protest, survey, and other proofs of loss, including the commission or other expenses of a sale by auction, are not admitted to make up the percentage of a claim; and are only paid by the underwriters in case the loss amounts to a claim without them.

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61 *Extra Charges* (*Custom of Lloyd's*, 1876)

Extra charges payable by underwriters, when incurred at the port of destination, are recovered in full; but when charges of the same nature are incurred at an intermediate port they are subjected to the same treatment in respect of insured and contributory values, as general average charges.

PARTICULAR AVERAGE ON GOODS—

62 *Adjustment of Return of Premium (Custom of Lloyd's,* 1876)

When the words " and arrival " follow the stipulation for a return of premium on a policy on goods, the particular average, but not the special charges, is deducted from the amount insured to arrive at the amount on which the return is taken.

RULES RESCINDED

Underwriter's Liability in respect of Jettison

(Proposed and Accepted 1874. Confirmed 1875.)

(RESCINDED 1889.)

That the direct liability of an underwriter on goods for the value of goods insured by him which have been jettisoned or sacrificed for the common safety, or of an underwriter on ship for ship's materials sacrificed for the common safety, be treated as particular average.

Damage to Cargo in Discharging (Custom of Lloyd's)

(RESCINDED 1890; 1891.)

Damage done to cargo by discharging it at a port of refuge, in the manner and under the circumstances customary at that port, is not allowed as general average.

This rule does not apply to damage done in lightening a ship which is ashore.

Adjustments " For the Consideration of Underwriters "

(RESCINDED 1894; 1895.)

That no adjustment " For Consideration of the Underwriters " shall be made, unless it contain a statement of the reasons of the average adjuster for making such adjustment.

Agency Fees Chargeable by Shipowners

(Proposed and Accepted 1879. Confirmed 1880.)

(RESCINDED 1906. 1907.)

That neither interest nor commission (excepting bank commission) nor any other charge by way of agency or remuneration for trouble, is allowed to the shipowner in general average or particular average on ship, or as a special charge in respect of payments made or services

rendered at the port at which the managing owner for the time being resides; excepting that a commission or agency fee is allowable in respect of payments made or services rendered on behalf of cargo, when such payments or services are not involved in the contract of affreightment.

Under-Insured Interest Made Good in General Average

(Proposed and Accepted 1882. Confirmed 1883.)

(RESCINDED 1922.)

That an underwriter who has paid for loss by jettison of the thing insured, is entitled, in proportion that the sum insured bears to the policy value, to whatever is recovered in general average in respect of such loss, although the amount so recovered may exceed the amount paid by him.

Vessel in Ballast and under Charter; Contributing Interests

(Proposed and Accepted 1896. Confirmed 1897.)

(RESCINDED June, 1926.)

That when a vessel is in ballast and under charter, the interests contributing to expenses or sacrifices incurred for the common safety are, in practice, the ship and the freight she is earning under the charter, computed as usual in the adjustment of general average, unless the expenses are salvage expenses specifically charged by a Court of Law or by arbitration to the vessel without any regard to the freight.

44A. *Salvage Expenses. Application of Rules XXI and XXII*

(Proposed and Accepted 1927. Confirmed 1928.)

(RESCINDED 1942.)

That in the application of Rules XXI and XXII of York-Antwerp Rules, 1924, no distinction shall be drawn in practice between general average expenses and expenses for salvage services rendered by or accepted under agreement, provided that such expenses were incurred for the common safety within the meaing of Rule "A."

UNIFORMITY RESOLUTIONS

1. *York-Antwerp Rules* 1924*: Application of Rule XIV*

(Passed November, 1928.)

That, in practice, in applying Rule XIV of the York-Antwerp Rules, 1924, the cost of the temporary repair of the accidental damage there referred to shall be allowed in general average up to the saving to the general average by effecting such temporary repair, without regard to the saving (if any) to other interests.

APPENDIX F

CARRIAGE OF GOODS BY SEA ACT, 1924

(14 & 15 Geo. 5. Ch. 22)

ARRANGEMENT OF SECTIONS A.D. 1924.

Sect.

CHAPTER XXII

AN Act to amend the law with respect to the carriage of goods by sea (1st August, 1924.) A.D. 1924.

WHEREAS at the International Conference on Maritime Law held at Brussels in October, 1922, the delegates at the Conference, including the delegates representing His Majesty, agreed unanimously to recommend their respective Governments to adopt as the basis of a convention a draft convention for the unification of certain rules relating to bills of lading:

And whereas at a meeting held at Brussels in October, 1923, the rules contained in the said draft convention were amended by the Committee appointed by the said Conference:

And whereas it is expedient that the said rules as so amended and as set out with modifications in the Schedule to this Act (in this Act referred to as "the Rules") should, subject to the provisions of this Act, be given the force of law with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Application of Rules in Schedule.

1. Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the

A.D. 1924.

carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland.

Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.

2. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Statement as to application of Rules to be included in bills of lading.

3. Every bill of lading, or similar document of title, issued in Great Britain or Northern Ireland which contains or is evidence of any contract to which the Rules apply, shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act.

Modification of Article VI of Rules in relation to coasting trade.

4. Article VI of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port in Great Britain or Northern Ireland or to a port in the Irish Free State, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.

5. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Short title, saving, and operation.

6.—(1) This Act may be cited as the Carriage of Goods by Sea Act, 1924.

(2) Nothing in this Act shall affect the operation of sections four hundred and forty-six to four hundred and fifty, both inclusive, five hundred and two, and five hundred and three of the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

57 & 58 Vict. c. 60.

(3) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before such day, not being earlier than the thirtieth day of June, nineteen hundred and twenty-four, as His Majesty may by Order in Council direct, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.

SCHEDULE A.D. 1924.

RULES RELATING TO BILLS OF LADING

ARTICLE I

Definitions

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) " Carrier " includes the owner or the charterer who enters into a contract of carriage with a shipper :

(*b*) " Contract of carriage " applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same :

(*c*) " Goods " includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried :

(*d*) " Ship " means any vessel used for the carriage of goods by sea :

(*e*) " Carriage of goods " covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II

Risks

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III

Responsibilities and Liabilities

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(*a*) Make the ship seaworthy :

(*b*) Properly man, equip, and supply the ship :

A.D. 1924.

(*c*) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

(*a*) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(*b*) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(*c*) The apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*), and (*c*).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie

evidence of the delivery by the carrier of the goods as described in the bill of lading. A.D. 1924.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a " shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the " shipped " bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a " shipped " bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV

Rights and Immunities

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section

A.D. 1924.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(*a*) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship :
(*b*) Fire, unless caused by the actual fault or privity of the carrier :
(*c*) Perils, dangers and accidents of the sea or other navigable waters :
(*d*) Act of God :
(*e*) Act of war :
(*f*) Act of public enemies :
(*g*) Arrest or restraint of princes, rulers or people, or seizure under legal process :
(*h*) Quarantine restrictions :
(*i*) Act or omission of the shipper or owner of the goods, his agent or representative :
(*j*) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general :
(*k*) Riots and civil commotions :
(*l*) Saving or attempting to save life or property at sea :
(*m*) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods :
(*n*) Insufficiency of packing :
(*o*) Insufficiency or inadequacy of marks :
(*p*) Latent defects not discoverable by due diligence :
(*q*) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency,

unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. A.D. 1924.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article V

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

Special Conditions

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall

A.D. 1924.

in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect :

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII

Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII

Limitation of Liability

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX

The monetary units mentioned in these Rules are to be taken to be gold value.

APPENDIX G

"C.I.F. PLUS TEN"

A SYSTEM FOR CALCULATING INSURABLE VALUE ON THE BASIS OF C.I.F. COST PLUS 10%

Prepared by L. GURNEY

The method usually adopted to arrive at a valuation for insurance is to estimate the insurance charges and then to arrive at a reasonably correct figure by trial and error.

The table following can be applied to all insurances effected on the basis of Cost, Insurance and Freight plus 10 per cent.

Its use saves time and eliminates the trial and error system, and although calculated on the rate to the nearest 1s. per cent it provides a result which is correct for all practical purposes.

The user of the table can easily elaborate upon it; e.g. for a rate of £2 2s. 6d. per cent use the mean of 2·37 and 2·43 in column B, viz., 2·40 per cent.

If desired, the calculation can be made on the net insurance rates. Alternatively, if "Cost Price" includes marine insurance, the table can be used for war premiums only or for the Combined Marine Surcharge plus war premiums.

It must be remembered that the table is only intended for the purpose of calculating the insured value, and the actual premium payable will vary slightly from the figure included in the valuation for insurance. Subject to the foregoing reservations it can also be used for costing up on F.O.B. values.

Following the table are two examples showing the manner in which the insured value is calculated.

TABLE OF RATES (COLUMN A) SHOWING THE PERCENTAGE (COLUMN B) REPRESENTING THE COST OF INSURANCE TO BE ADDED TO THE COST AND FREIGHT VALUE BEFORE ADDING 10% FOR PROFIT

NOTE. If insurance rate includes pence the rate to nearest shilling should be used. If it is desired that the C.I.F. cost shall include net insurance premiums, then reduce rate to a net basis before selecting the appropriate figure in Column A.

A %	B %	A %	B %	A %	B %	A %	B %	A %	B %	A %	B %
—	—	2·55	2·89	5·05	5·89	7·55	9·06	10·05	12·43	12·55	16·02
—	—	2·60	2·95	5·10	5·95	7·60	9·13	10·10	12·50	12·60	16·10
—	—	2·65	3·01	5·15	6·01	7·65	9·19	10·15	12·57	12·65	16·17
—	—	2·70	3·07	5·20	6·07	7·70	9·26	10·20	12·64	12·70	16·24
·25	·28	2·75	3·12	5·25	6·13	7·75	9·32	10·25	12·71	12·75	16·32
·30	·34	2·80	3·18	5·30	6·20	7·80	9·39	10·30	12·78	12·80	16·39
·35	·39	2·85	3·24	5·35	6·26	7·85	9·46	10·35	12·85	12·85	16·47
·40	·45	2·90	3·30	5·40	6·32	7·90	9·52	10·40	12·92	12·90	16·54
·45	·50	2·95	3·36	5·45	6·38	7·95	9·59	10·45	12·99	12·95	16·62
·50	·56	3·00	3·42	5·50	6·44	8·00	9·65	10·50	13·06	13·00	16·69
·55	·61	3·05	3·48	5·55	6·51	8·05	9·72	10·55	13·13	13·05	16·76
·60	·67	3·10	3·54	5·60	6·57	8·10	9·79	10·60	13·20	13·10	16·84
·65	·73	3·15	3·59	5·65	6·63	8·15	9·85	10·65	13·27	13·15	16·92
·70	·78	3·20	3·65	5·70	6·69	8·20	9·92	10·70	13·34	13·20	16·99
·75	·84	3·25	3·71	5·75	6·76	8·25	9·98	10·75	13·42	13·25	17·07
·80	·89	3·30	3·77	5·80	6·82	8·30	10·05	10·80	13·49	13·30	17·14
·85	·95	3·35	3·83	5·85	6·88	8·35	10·12	11·85	13·56	13·35	17·22
·90	1·00	3·40	3·89	5·90	6·95	8·40	10·18	10·90	13·63	13·40	17·29
·95	1·06	3·45	3·95	5·95	7·01	8·45	10·25	10·95	13·70	13·45	17·37
1·00	1·12	3·50	4·01	6·00	7·07	8·50	10·32	11·00	13·77	13·50	17·44
1·05	1·17	3·55	4·07	6·05	7·13	8·55	10·39	11·05	13·84	13·55	17·52
1·10	1·23	3·60	4·13	6·10	7·20	8·60	10·45	11·10	13·91	13·60	17·60
1·15	1·29	3·65	4·19	6·15	7·26	8·65	10·52	11·15	13·98	13·65	17·67
1·20	1·34	3·70	4·25	6·20	7·32	8·70	10·59	11·20	14·05	13·70	17·75
1·25	1·40	3·75	4·31	6·25	7·39	8·75	10·65	11·25	14·13	13·75	17·82
1·30	1·46	3·80	4·37	6·30	7·45	8·80	10·72	11·30	14·20	13·80	17·90
1·35	1·51	3·85	4·43	6·35	7·51	8·85	10·79	11·35	14·27	13·85	17·98
1·40	1·57	3·90	4·49	6·40	7·58	8·90	10·86	11·40	14·34	13·90	18·05
1·45	1·63	3·95	4·55	6·45	7·64	8·95	10·93	11·45	14·41	13·95	18·13
1·50	1·68	4·00	4·61	6·50	7·70	9·00	10·99	11·50	14·49	14·00	18·20
1·55	1·74	4·05	4·67	6·55	7·77	9·05	11·06	11·55	14·56	14·05	18·28
1·60	1·80	4·10	4·73	6·60	7·83	9·10	11·13	11·60	14·63	14·10	18·36
1·65	1·85	4·15	4·79	6·65	7·90	9·15	11·20	11·65	14·70	14·15	18·44
1·70	1·91	4·20	4·85	6·70	7·96	9·20	11·26	11·70	14·77	14·20	18·52
1·75	1·97	4·25	4·91	6·75	8·02	9·25	11·33	11·75	14·85	14·25	18·59
1·80	2·03	4·30	4·97	6·80	8·09	9·30	11·40	11·80	14·92	14·30	18·67
1·85	2·08	4·35	5·03	6·85	8·15	9·35	11·47	11·85	14·99	14·35	18·75
1·90	2·14	4·40	5·09	6·90	8·22	9·40	11·54	11·90	15·07	14·40	18·83
1·95	2·20	4·45	5·15	6·95	8·28	9·45	11·60	11·95	15·14	14·45	18·90
2·00	2·25	4·50	5·21	7·00	8·35	9·50	11·67	12·00	15·21	14·50	18·98
2·05	2·31	4·55	5·27	7·05	8·41	9·55	11·74	12·05	15·28	14·55	19·06
2·10	2·37	4·60	5·33	7·10	8·48	9·60	11·81	12·10	15·36	14·60	19·14
2·15	2·43	4·65	5·40	7·15	8·54	9·65	11·88	12·15	15·43	14·65	19·21
2·20	2·48	4·70	5·46	7·20	8·61	9·70	11·95	12·20	15·50	14·70	19·29
2·25	2·54	4·75	5·52	7·25	8·67	9·75	12·02	12·25	15·58	14·75	19·37
2·30	2·60	4·80	5·58	7·30	8·74	9·80	12·09	12·30	15·65	14·80	19·45
2·35	2·66	4·85	5·64	7·35	8·80	9·85	12·16	12·35	15·72	14·85	19·53
2·40	2·72	4·90	5·70	7·40	8·87	9·90	12·23	12·40	15·80	14·90	19·61
2·45	2·77	4·95	5·76	7·45	8·93	9·95	12·29	12·45	15·87	14·95	19·69
2·50	2·83	5·00	5·83	7·50	9·00	10·00	12·36	12·50	15·95	15·00	19·76

EXAMPLE No. 1

Cost of Goods (F.O.B.)	£6594
Freight	143
	£6737
If actual marine and war rates total 138/6 per cent, say 139s.% then add 8·28% as per column B of table.	
£6737 at 8·28% is	558
	£7295
Add 10% to cover profit	730
Insurable Value	£8025

Actual premium payable:
£8025 at 138/6% is . . £555/14/8 plus stamp.

EXAMPLE No. 2

Cost of Goods	Dollars	3269
Freight	,,	478
	,,	3747
If actual marine and war rates total 3 Dollars and 55 cents per cent, then add 4·07% as per column B of table.		
3747 Dollars at 4·07% is	,,	153
	,,	3900
Add 10% to cover profit	,,	390
Insurable Value		$4290

Actual premium payable:
4290 Dollars at 3·55% is . . 152 Dollars 30 Cents plus stamp.

INDEX